25/-

MIDDLE TEMPLE LIBRARY
WITHDRAWN STOCK

KM 337.33 DYM

Digitized by the Internet Archive
in 2025

https://archive.org/details/deathdutiescompr0000robe

THE DEATH DUTIES

COMPRISING

ESTATE, LEGACY AND SUCCESSION DUTIES.

THE LAW AND PRACTICE

AND THE

TEXT OF THE STATUTES

BY

ROBERT DYMOND

OF THE ESTATE DUTY OFFICE, SOMERSET HOUSE, SOLICITOR (HONOURS)

ASSISTED BY

G. M. GREEN, LL.B. (LOND.)

OF THE ESTATE DUTY OFFICE, SOMERSET HOUSE, SOLICITOR (HONOURS).

SIXTH EDITION.

THE SOLICITORS' LAW STATIONERY SOCIETY, LTD.

LONDON:

22 CHANCERY LANE, W.C.2.

27 & 28 WALBROOK, E.C.4. — 49 BEDFORD ROW, W.C.1.

6 VICTORIA STREET, S.W.1. — 15 HANOVER STREET, W.1.

LIVERPOOL: 19 & 21 NORTH JOHN STREET.

GLASGOW: 66 ST. VINCENT STREET.

1930.

First Edition . . 1913.
Second Edition . . 1915.
Third Edition . . 1920.
Fourth Edition . . 1925.
Fifth Edition . . 1926.

Printed by THE SOLICITORS' LAW STATIONERY SOCIETY, LIMITED,
at their Works, 102-7 FETTER LANE, LONDON, E.C.4.

PREFACE TO THE SIXTH EDITION.

OWING to the Fifth Edition having been exhausted earlier than was expected, this book has, I regret, been temporarily out of print.

It will be found that considerable changes have been effected in the present Edition. The judicial decisions, some of considerable importance, and the legislation since the last Edition have been noted. The Finance Act, 1930, besides introducing a higher scale of rates for estates over £120,000, extends the area of taxation on death to certain transfers of property to private companies. The provisions of the Act on this point are somewhat elaborate and have been explained in some detail in the text. The book has also been expanded generally, but for the sake of keeping it within reasonable dimensions, a good deal of matter which has become obsolete has been omitted. The Chapters on accountability have been re-written, and with a view to greater facility in reference, considerable sections of the book have been re-arranged, in order that, so far as practicable, the whole of the information on any particular branch of the subject should be concentrated in one place. Further particulars have been included as to Scottish law and practice.

It has long seemed to me that insufficient attention is paid in practice to the incidence of the duties as between the accountable parties and the ultimate beneficiaries, and more detailed notes on this subject, with practically all the decided cases, have been incorporated in this Edition.

The alterations have almost entirely been carried out by Mr. G. M. Green, who assisted with the last Edition.

In conclusion I should like to express my grateful acknowledgments for valuable help and advice to Mr. G. C. Cunningham of the Estate Duty Office, Edinburgh, and again to Mr. W. E. Willan, of the Estate Duty Office, Somerset House.

R. DYMOND.

October, 1930.

PREFACE TO THE FIRST EDITION.

IT is perhaps necessary to give some explanation to justify this addition to the number of books on the Death Duties. In the first place, the importance of the Death Duties as a tax on capital and as a source of revenue has been largely increased by recent legislation. Their long history and the technicalities of the incidence of Legacy Duty and Succession Duty on the one hand and Estate Duty on the other have evolved a system of considerable complexity, and it is a matter of difficulty to obtain a clear idea of the subject.

Most of the more recent works deal with Estate Duty only, and it was thought that there was an opening for a book of moderate size giving a concise but practical account of all the Death Duties as they exist at the present time. Such a work could not have been carried out on the ordinary plan of setting out the decided Cases and Sections of the Acts and making notes thereon. I have therefore attempted to give the essence of the matter and to put it into a compact form so that it may be of practical use, not only to the lawyer, but also to the layman and the student. The winding path by which the present system has been attained has not been minutely followed, and the text has thus been freed from references to superseded duties, repealed law, and obsolete decisions.

At the same time the necessity for authority in support of the statements made has been kept strictly in view, and detailed references to the various Acts and Judicial Decisions are given at the foot of each page. The Index also is somewhat more elaborate than is usual for a book of this size.

All the Duties payable on Death being dealt with in one volume, their inter-dependence and the differences in incidence are made clear.

The book has been written from a practical point of view. In almost all cases illustrations are given, and I have endeavoured to convey the result of many years' experience of Death Duty Law and Practice both inside and outside the Estate Duty Office, but it must not be understood that any of the statements possess official authority.

In conclusion I wish to render grateful thanks to Mr. J. Webster Brown, of the Estate Duty Office, Solicitor, and author of a book on the Estate Duty, for valuable assistance and advice, and to Mr. F. P. Clark, of the same Office, for kindly reading the proofs.

R. DYMOND.

Estate Duty Office,
Somerset House,
June, 1913.

CONTENTS.

	PAGE
PREFACE TO THE SIXTH EDITION	iii
PREFACE TO THE FIRST EDITION	v
TABLE OF CASES	xi
TABLE OF STATUTES	xxxv
INTRODUCTION	xlvii
ABBREVIATIONS	xlviii

PART I.

ESTATE DUTY.

PRELIMINARY		1
CHAPTER I.	THE PROPERTY UPON WHICH IT IS PAYABLE	4
,, II.	RATES AND AMOUNT	116
,, III.	PERSONS ACCOUNTABLE AND INCIDENCE OF THE DUTY	164
,, IV.	EXEMPTIONS AND ALLOWANCES	233
,, V.	PRACTICE	282

PART II.

LEGACY DUTY.

PRELIMINARY		323
CHAPTER VI.	THE PROPERTY UPON WHICH IT IS PAYABLE	325
,, VII.	RATES AND AMOUNT	340
,, VIII.	PERSONS ACCOUNTABLE	367
,, IX.	EXEMPTIONS	379
,, X.	PRACTICE	394

PART III.

SUCCESSION DUTY.

		PAGE
PRELIMINARY		407
CHAPTER XI.	THE PROPERTY UPON WHICH IT IS PAYABLE	409
,, XII.	RATES AND AMOUNT	442
,, XIII.	PERSONS ACCOUNTABLE AND INCIDENCE OF THE DUTY	487
,, XIV.	EXEMPTIONS	511
,, XV.	PRACTICE	530

APPENDIX.

STATUTES RELATING TO DEATH DUTIES.

LEGACY DUTY ACT, 1796 (Sections 6, 8 to 31, 34, 35, 37 to 39, 41, 43 and 44) - 540

LEGACY DUTY ACT, 1799 (Section 1) - 551

,, ,, ,, 1805 (Sections 5 and 7) - 551

PROBATE AND LEGACY DUTIES ACT, 1808 (Section 44) - 552

STAMP ACT, 1815 (Schedule, Part III (2)) - 552

REVENUE ACT, 1845 (Section 4) - 554

SUCCESSION DUTY ACT, 1853 (Sections 1 to 55, and Schedule) - 554

REVENUE ACT, 1862 (Section 39) - 567

REVENUE (No. 2) ACT, 1864 (Sections 4 and 5) - 567

CROWN SUITS ACT, 1865 (Sections 55, 56 and 57) - 567

INLAND REVENUE ACT, 1868 (Section 9) - 568

CUSTOMS AND INLAND REVENUE ACT, 1880 (Sections 11 to 13) - 568

,, ,, ,, ,, 1881 (Sections 37, 38 and 41 to 43) - 569

REVENUE ACT, 1884 (Sections 1 and 11) - 571

CUSTOMS AND INLAND REVENUE ACT, 1888 (Sections 21 and 22) - 571

,, ,, ,, ,, 1889 (Sections 10 to 15) - 573

STAMP DUTIES MANAGEMENT ACT, 1891 (Section 2) - 575

FINANCE ACT, 1894 (Sections 1 to 24, 42, and First and Second Schedules) - 576

PAGE

FINANCE ACT, 1896 (Sections 14 to 24, and 39 to 41 and Schedule, Part III) - - - - - - - - - - - - - 592
FINANCE ACT, 1898 (Sections 13, 14 and 17) - - - - - 595
,, ,, 1900 (Sections 11 to 14, 18 and 19 and Second Schedule) - - - - - - - - - - - - 596
REVENUE ACT, 1903 (Sections 14 and 17) - - - - - - 598
FINANCE ACT, 1907 (Sections 12 to 16, 30, and First Schedule) - 598
FINANCE (1909-10) ACT, 1910 (Sections 33, 34 and 42, 54 to 61, 63, 64, 95 and 96, Second and Sixth Schedules) - - - - - 600
FINANCE ACT, 1911 (Sections 18 and 19) - - - - - - 609
,, ,, 1912 (Section 9) - - - - - - - - - 609
,, ,, 1914 (Sections 12 to 16, and 18, and First and Second Schedules) - - - - - - - - - - 609
DEATH DUTIES (KILLED IN WAR) ACT, 1914 (the entire Act) - 613
AMERICAN LOAN ACT, 1915 (Sections 1 and 2) - - - - - 613
FINANCE (No. 2) ACT, 1915 (Sections 46 to 48 and 51) - - 614
FINANCE ACT, 1916 (Sections 63, 67 and 69) - - - - - 614
,, ,, 1917 (Sections 29, 34 and 38) - - - - - 615
,, ,, 1918 (Sections 42, 44 and 45) - - - - - 616
,, ,, 1919 (Sections 29 to 31, 38 and Third Schedule) - 616
WAR LOAN ACT, 1919 - - - - - - - - - - - - 617
FINANCE ACT, 1921 (Sections 43, 44 and 65) - - - - - 618
,, ,, 1922 (Sections 30, 44, 45 and 49) - - - - 618
,, ,, 1923 (Sections 37 and 39) - - - - - - 619
,, ,, 1924 (Sections 38 and 41) - - - - - - 620
LAW OF PROPERTY ACT, 1925 (Sections 16, 17, 18, 205 and 209) - 620
LAND REGISTRATION ACT, 1925 (Sections 3, 73, 87, 129 and 148) - 623
LAND CHARGES ACT, 1925 (Sections 10, 13, 20, 23 and 26) - - 627
FINANCE ACT, 1925 (Sections 22 to 24, 28, and Fourth Schedule) - 629
ADOPTION OF CHILDREN ACT, 1926 (Sections 5 and 12) - - - 631
LEGITIMACY ACT, 1926 (Sections 7 and 12) - - - - - 631
FINANCE ACT, 1927 (Sections 51 to 53, 57, and Sixth Schedule) - 631
,, ,, 1928 (Sections 30 and 35) - - - - - - 632
,, ,, 1930 (Sections 33 to 40, 53, and Second and Third Schedules) - - - - - - - - - - - - 633
ADOPTION OF CHILDREN (SCOTLAND) ACT, 1930 (Sections 5 and 12) 641

INDEX - - - - - - - - - - - - - 642

TABLE OF CASES.

PAGE

Aberdeen Corporation, Macdonald's Trustees *v.* - - - - - - - - 352
Abergavenny S. E., *re*, Abergavenny *v.* Nevill, [1926] Ch. 465 ; 95 L. J. Ch. 289 ; 134 L. T. 662 - - - - - - - - - - 124, 220
Acklom, *re*, Oakeshott *v.* Hawkins, [1929] 1 Ch. 195 ; 98 L. J. Ch. 44 ; 140 L. T. 192 - - - - - - - - - - - - 31
Advocate-General *v.* Oswald (1848), 10 Dun, 969 - - - - - - 345
Advocate-General, Thomson *v.* - - - - - - - - - -111, 338, 387
Ainsworth, *re*, Finch *v.* Smith, [1915] 2 Ch. 96 ; 84 L. J. Ch. 701 ; 113 L. T. 368 - - - - - - - - - - - - - 374
Alexander's Trustees *v.* Alexander's M. C. Trustees, [1910] S. C. 637 ; 47 S. L. R. 537 - - - - - - - - - - - 218 224
Alexander's Trustees, H. M. Advocate *v.* - - - - - - - - 149, 153
Allen, Loyd *v.*, *re* Tinkler - - - - - - - - - - - - 227
Allen *v.* Public Trustee, *re* Wedgwood - - - - - - - - 225, 351
Allhusen *v.* Whittell (1867), L. R. 4 Eq. 295 ; 36 L. J. Ch. 929 ; 16 L. T. 695 - - - - - - - - - - - - - - 215, 349
Amiss *v.* Witt (1863), 33 Beav. 619 - - - - - - - - - - 33
Anderson, Atkinson *v.* - - - - - - - - - - - - - 443
Anderson's Trustees *v.* Mathew (1915), 53 S. L. R. 320 - - - - 208
Anderton, Attorney-General *v.* - - - - - - - - - - - 485
Anson, *re*, Buller *v.* Anson, [1915] 1 Ch. 52 ; 84 L. J. Ch. 347 ; 111 L. T. 1065 - - - - - - - - - - - - - - 231
Archer-Shee, Baker *v.* - - - - - - - - - - - - 105, 106
Arnholz *v.* Hudson, *re* Northcliffe - - - - - - - - - 14, 29, 365
Aschrott, *re*, Clifton *v.* Strauss, [1927] 1 Ch. 313 ; 96 L. J. Ch. 205 - - 139
Ashby's Cobham Brewery Co., Ltd., *ex parte*, *re* "The Crown" ; Ashby's Staines Brewery Co., Ltd., *ex parte*, *re* "The Hand & Spear," [1906] 2 K. B. 754 ; 95 L. T. 260 - - - - - - - - - - 300
Assheton-Smith, Attorney-General *v.* - - - - - - - - 479, 483
Atkinson *v.* Anderson (1882), 21 Ch. D. 100 ; 51 L. J. Ch. 452 ; 46 L. T. 850 443
Atkinson, Blythe *v.*, *re* Leaper - - - - - - - - - - - 33
Atkinson, Macculloch *v.* - - - - - - - - - - - - - 446
Attorney-General *v.* Anderton, [1921] 1 K. B. 159 ; 90 L. J. K. B. 435 ; 125 L. T. 95 - - - - - - - - - - - - - 485
Attorney-General *v.* Assheton-Smith, [1924] 2 K. B. 25 ; 93 L. J. K. B. 474 ; 132 L. T. 699 - - - - - - - - - - - 479, 483
Attorney-General *v.* Bedford, [1926] 2 K. B. 184 ; 95 L. J. K. B. 517 ; 135 L. T. 541 - - - - - - - - - - - - - 430
Attorney-General *v.* Beech, [1899] A. C. 53 ; 68 L. J. Q. B. 130 ; 79 L. T. 565 49
Attorney-General *v.* Belilios, [1928] 1 K. B. 798 ; 97 L. J. K. B. 139 ; 138 L. T. 294 - - - - - - - - - - - - 113, 440
Attorney-General *v.* Boden, [1912] 1 K. B. 539 ; 81 L. J. K. B. 704 ; 105 L. T. 247 - - - - - - - - - - - - - 30, 239
Attorney-General *v.* Bouwens (1838), 4 M. & W. 171 ; 1 H. & H. 319 ; 7 L. J. Ex. 297 - - - - - - - - - - - - - 103
Attorney-General *v.* Brackenbury (1863), 1 H. & C. 782 ; 32 L. J. Ex. 108 334
Attorney-General, Braybrooke *v.* - - - - - - - - - 412, 472
Attorney-General, Brown *v.* - - - - - - - - - - - 413

PAGE

Attorney-General *v.* Bruce, [1901] 2 K. B. 391; 70 L. J. K. B. 767; 85 L. T. 114 - - - - - - - - - - - - - 370, 383
Attorney-General *v.* Burns, [1923] 2 K. B. 77; 92 L. J. K. B. 521; 129 L. T. 57 - - - - - - - - - - - - - - 109
Attorney-General *v.* Campbell (1872), L. R. 5 E. & I. App. 524; 41 L. J. Ch. 611 - - - - - - - - - - - - - -113, 438, 439
Attorney-General *v.* Cavendish (1810), Wight 82; 12 R. R. 716 - - 344, 346
Attorney-General *v.* Cecil (1870), L. R. 5 Ex. 263; 39 L. J. Ex. 201; 23 L. T. 20 - - - - - - - - - - - - -412, 479, 482
Attorney-General *v.* Chamberlain (1904), 90 L. T. 581; 20 T. L. R. 359 - 39
Attorney-General *v.* Chambres, [1921] 1 K. B. 173; 90 L. J. K. B. 441; 125 L. T. 189 - - - - - - - - - - - - 377, 489
Attorney-General, Charlton *v.* - - - - - - - - - - 412, 423, 425, 479
Attorney-General *v.* Cleave (1873), 31 L. T. 86 - - - - - - - - 336
Attorney-General *v.* Cobham (1904), 90 L. T. 816; 20 T. L. R. 337 - - 39
Attorney-General *v.* Coole, [1921] 3 K. B. 607; 91 L. J. K. B. 250; 126 L. T. 24 - - - - - - - - - - - - - 21, 27, 28, 254
Attorney-General *v.* Dardier (1883), 11 Q. B. D. 16; 52 L. J. Q. B. 329; 48 L. T. 582 - - - - - - - - - - - - - 348, 539
Attorney-General *v.* de Preville, [1900] 1 Q. B. 223; 69 L. J. Q. B. 283; 81 L. T. 690 - - - - - - - - - - - - - - 50
Attorney-General *v.* Dobree, [1900] 1 Q. B. 442; 69 L. J. Q. B. 223; 81 L. T. 607 - - - - - - - - - - - - - 82, 90, 239
Attorney-General *v.* Dodd, [1894] 2 Q. B. 150; 63 L. J. Q. B. 319; 70 L. T. 660 - - - - - - - - - - - - - - 6
Attorney-General *v.* Dodington, [1897] 2 Q. B. 373; 66 L. J. Q. B. 684; 77 L. T. 299 - - - - - - - - - - - - -147, 249, 271
Attorney-General, Drake *v.* - - - - - - - - - -334, 335, 428
Attorney-General *v.* Eyres, [1909] 1 K. B. 723; 78 L. J. K. B. 384; 100 L. T. 396 - - - - - - - - - - - - - - 238, 415
Attorney-General *v.* Farrell, [1930] 1 K. B. 539 - - - - - - - 37, 42
Attorney-General *v.* Felce (1894), 10 T. L. R. 337 - - - - - - 436
Attorney-General *v.* Floyer (1862), 9 H. L. C. 477; 31 L. J. Ex. 404; 7 L. T. 47 - - - - - - - - - - - - - - - 412, 472
Attorney-General *v.* Fox (*see* Attorney-General *v.* Lane Fox) - - - 3, 49
Attorney-General *v.* Gell (1865), 3 H. & C. 615; 34 L. J. Ex. 145; 12 L. T. 461 - - - - - - - - - - - - - - - 418
Attorney-General *v.* Giles (1860), 5 H. & N. 255; 29 L. J. Ex. 176; 1 L. T. 553 - - - - - - - - - - - - - - - 369, 373
Attorney-General *v.* Glossop, [1907] 1 K. B. 163; 76 L. J. K. B. 199; 95 L. T. 823 - - - - - - - - - - - - 154, 252, 253
Attorney-General, Grey *v.* - - - - - - - - - - - 42, 43, 43
Attorney-General *v.* Hannen (1904), 48th Inland Revenue Report, page 121 29
Attorney-General *v.* Hawkins, [1901] 1 K. B. 285; 70 L. J. K. B. 195; 83 L. T. 531 - - - - - - - - - - - - - 91, 239
Attorney-General *v.* Hay, [1899] 2 Q. B. 245; 68 L. J. Q. B. 557; 80 L. T. 712 247
Attorney-General *v.* Heywood (1887), 19 Q. B. D. 326; 56 L. J. Q. B. 572; 57 L. T. 271 - - - - - - - - - - - - - 42
Attorney-General *v.* Higgins (1857), 2 H. & N. 339; 26 L. J. Ex. 403 - 108
Attorney-General *v.* Holbrook (1823), 3 Y. & J. 114; 12 Pr. 407 - - 327
Attorney-General *v.* Howe (1925), 133 L. T. 801; [1925] W. N. 199; 41 T. L. R. 610 - - - - - - - - - - - - 130, 161
Attorney-General *v.* Hubbock (1884), 13 Q. B. D. 275; 53 L. J. Q. B. 146; 50 L. T. 374 - - - - - - - - - - - - - - 106

PAGE
Attorney-General *v.* Jewish Colonization Association, [1901] 1 K. B. 123; 70 L. J. K. B. 101; 83 L. T. 561 - - - - - - - - 112, 436
Attorney-General *v.* Johnson, [1903] 1 K.B. 617; 72 L. J. K. B. 323; 88 L. T. 445 - - - - - - - - - - - 46, 240, 432
Attorney-General *v.* Johnson, [1907] 2 K. B. 885; 76 L. J. K. B. 1150; 97 L. T. 720 - - - - - - - - - - - - 108, 434
Attorney-General *v.* Lane Fox, [1924] 2 K. B. 498; 93 L. J. K. B. 1059; 132 L. T. 704 - - - - - - - - - - - - 3, 49
Attorney-General, Lethbridge *v.* - - - - - - - - - - 91, 239
Attorney-General, Lilford *v.* - - - - - - - - - - - - 454
Attorney-General *v.* Littledale (1871), L. R. 5 E. & I. App. 290; 40 L. J. Ex 241; 24 L. T. 921 - - - - - - - - - - - 514
Attorney-General *v.* Lomas (1873), L. R. 9 Ex. 29; 43 L. J. Ex. 32; 29 L. T. 749 - - - - - - - - - - - - - 6
Attorney-General *v.* Londesborough, [1905] 1 K. B. 98; 74 L. J. K. B. 81; 92 L. T. 39 - - - - - - - - - - - - 248
Attorney-General *v.* Malkin (1845), 2 Phil. 64; 16 L. J. Ch. 99; 10 Jur. 955 - - - - - - - - - - - - - - 336
Attorney-General *v.* Mander (1896), 65 L. J. Q. B. 246; 74 L. T. 103; 44 W. R. 413 - - - - - - - - - - - - 430, 503
Attorney-General *v.* Metcalfe (1851), 6 Ex. 26; 20 L. J. Ex. 329; 16 L. T. 417 - - - - - - - - - - - - - 344
Attorney-General *v.* Mitchell (1881), 6 Q. B. D. 548; 50 L. J. Q. B. 406; 44 L. T. 580 - - - - - - - - - - - 425, 427
Attorney-General *v.* Montagu, [1904] A. C. 316; 73 L. J. K. B. 707; 90 L. T. 726 - - - - - - - - - - - - - 153
Attorney-General *v.* Montefiore (1888), 21 Q. B. D. 461; 59 L. T. 534 - 421
Attorney-General *v.* Montefiore (1909), 52nd Inland Revenue Report, page 85 - - - - - - - - - - - 185, 378, 497
Attorney-General *v.* Murray, [1904] 1 K. B. 165; 73 L. J. K. B. 66; 89 L. T. 710 - - - - - - - - - - - - 87, 88, 89
Attorney-General *v.* National Provincial Bank (1928), 44 T. L. R. 701 - 105
Attorney-General, New York Breweries Co. *v.* - - - - - - 165, 282
Attorney-General, Northumberland *v.* - 113, 415, 455, 473, 476, 480, 483, 487, 499, 502, 503
Attorney-General, Parr *v.* - - - - - - - - - - - - 131
Attorney-General, Partington *v.* - - - - - - - - - - 18
Attorney-General *v.* Pearson, [1924] 2 K. B. 375; 94 L. J. K. B. 139; 132 L. T. 717 - - - - - - - - - - - - 83, 124
Attorney-General *v.* Peek, [1913] 2 K. B. 487; 82 L. J. K. B. 767; 108 L. T. 744 - - - - - - - - - - - - 266, 516
Attorney-General *v.* Penrhyn (1900), 83 L. T. 103; 16 T. L. R. 464 - 24, 252
Attorney-General, Pickard *v.* - - - - - - - - - - - - 333
Attorney-General *v.* Public Trustee, [1920] 3 K. B. 675; 90 L. J. K. B. 251; 124 L. T. 249 - - - - - - - - - - - 420
Attorney-General *v.* Public Trustee, *re* Tuck - - - - - - - 6
Attorney-General *v.* Quixley (1929), 98 L. J. K. B. 652; 141 L. T. 288 - 263
Attorney-General *v.* Richmond & Gordon, [1909] A. C. 466; 78 L. J. K. B. 998; 101 L. T. 241 - - - - - - - - - - 96, 150
Attorney-General *v.* Richmond (No. 2), [1907] 2 K. B. 940; 76 L. J. K. B. 1049; 97 L. T. 791 - - - - - - - - - - - - 10
Attorney-General *v.* Robertson, [1893] 1 Q. B. 293; 62 L. J. Q. B. 282; 68 L. T. 371 - - - - - - - - - - - - 485

PAGE

Attorney-General *v.* Rudge, [1928] 2 K. B. 515; 97 L. J. K. B. 710; 44 T. L. R. 708 - - - - - - - - - - - - 350, 383
Attorney-General *v.* Rushton (1864), 2 H. & C. 812; 33 L. J. Ex. 184; 9 L. T. 832 - - - - - - - - - - - - 478
Attorney-General *v.* Sandwich, [1922] 2 K. B. 500; 91 L. J. K. B. 757; 127 L. T. 517 - - - - - - - - - - - - 239
Attorney-General *v.* Seccombe, [1911] 2 K. B. 688; 80 L. J. K. B. 913; 105 L. T. 18 - - - - - - - - - - - - 41, 77, 163
Attorney-General *v.* Sefton (1865), 11 H. L. C. 257; 34 L. J. Ex. 98; 12 L. T. 242 - - - - - - - - - - - - 461
Attorney-General *v.* Selborne, [1902] 1 K. B. 388; 71 L. J. K. B. 289; 85 L. T. 714 - - - - - - - - - - - - 416, 484
Attorney-General *v.* Sharpe (1890), 7 T. L. R. 558 - - - - - - 330
Attorney-General *v.* Sibthorp (1858), 3 H. & N. 424; 28 L. J. Ex. 9; 31 L. T. 218 - - - - - - - - - - - - 412, 472
Attorney-General *v.* Smith, [1923] 2 K. B. 531; 92 L. J. K. B. 922; 130 L. T. 94 - - - - - - - - - - - - 20
Attorney-General *v.* Smith-Marriott, [1899] 2 Q. B. 595; 69 L. J. Q. B. 59; 81 L. T. 359 - - - - - - - - - - 162, 239, 240
Attorney-General *v.* Smythe (1862), 9 H. L. C. 497; 31 L. J. Ex. 404; 7 L. T. 47 - - - - - - - - - - - - 412, 479
Attorney-General *v.* Strange, [1898] 2 Q. B. 39; 67 L. J. Q. B. 629; 78 L. T. 516 - - - - - - - - - - - - 250
Attorney-General, Sudeley *v.* - - - - - - - - - - 106, 108
Attorney-General *v.* Thynne, [1914] 1 K. B. 351; 83 L. J. K. B. 592; 110 L. T. 203 - - - - - - - - - - - - 131
Attorney-General *v.* Upton (1866), L. R. 1 Ex. 224; 4 H. & C. 336; 35 L. J. Ex. 138; 14 L. T. 334 - - - - - - - 422, 424, 426
Attorney-General *v.* Wack, *The Times*, 14th June, 1899 - - - - 191
Attorney-General *v.* Wade, [1910] 1 K. B. 703; 79 L. J. K. B. 569; 102 L. T. 494 - - - - - - - - - - - - 364
Attorney-General *v.* Walker, *re* Reversionary Interest Society, *The Times* 14th May, 1896 - - - - - - - - - - 242, 251
Attorney-General, Wallace *v.* - - - - - - - - 433, 434, 439
Attorney-General *v.* Watson, [1917] 2 K. B. 427; 86 L. J. K. B. 1034; 117 L. T. 187 - - - - - - - - - - - 26, 255
Attorney-General, Winans *v.*, [1910] - - - - - - - - - 107
Attorney-General, Winans *v.*, [1904] - - - - - - - - - 388
Attorney-General, Wolverton *v.* - - - - - - 477, 479, 483, 498
Attorney-General *v.* Wood, [1897] 2 Q. B. 102; 66 L. J. Q. B. 522; 76 L. T. 654 - - - - - - - - - - - - 253, 255
Attorney-General *v.* Worrall, [1895] 1 Q. B. 99; 64 L. J. Q. B. 141; 71 L. T. 807 - - - - - - - - - - - - 42, 43
Attorney-General *v.* Wreford-Brown, *re* Bateman - - - - - 240, 412
Attorney-General *v.* Yelverton (1861), 7 H. & N. 306; 30 L. J. Ex. 333; 5 L. T. 451 - - - - - - - - - - - - 412
Attorney-General for Alberta, Royal Trust Co. *v.* - - - - - - 105
Attorney-General for Ireland, Cullen *v.* - - - - - - - - 335
Attorney-General for Ireland *v.* Delaney (1876), 10 Ir. R. C. L. 104 - 390
Attorney-General for Ireland *v.* Hope (1868), 2 Ir. R. C. L. 368 - - 390
Attorney-General for Ireland *v.* Jameson, [1905] 2 I. R. 218 - - - 138
Attorney-General for Ireland *v.* Lordan (1906), 40 I. L. T. 98 - 378, 496
Attorney-General for Ireland *v.* Lorton (1861), 11 Ir. C. L. 429; 5 L. T. 122 460
Attorney-General for Ireland *v.* Maxwell (1860), 10 Ir. C. L. 262 - - 336

PAGE

Attorney-General for Ireland *v.* Power, [1906] 2 I. R. 272 - - - 17, 254
Attorney-General for Ireland *v.* Rathdonnell, [1896] W. N. 141 ; 32 L. R. Ir. 574 - - - - - - - - - - - - - 413
Attorney-General for Ireland *v.* Riall, [1906] 2 I. R. 122 - - - - 420
Attorney-General for Ireland *v.* Robinson, [1901] W. N. 192 ; [1901] 2 I. R. 67 ; 35 I. L. T. 37 - - - - - - - - - - - 87, 88
Attorney-General for Ireland *v.* Smyth, [1905] 2 I. R. 553 ; 39 I. L. T. 171 36
Attorney-General for Ontario, Erie Beach Co. Ltd. *v.* - - - - - 108
Austin *v.* Mead, *re* Mead - - - - - - - - - - - - 33
Avery, *re*, Pinsent *v.* Avery, [1913] 1 Ch. 208 ; 82 L. J. Ch. 434 ; 108 L. T. 1 - - - - - - - - - - - - - 206
Badart's Trusts, *re* (1870), L. R. 10 Eq. 288 ; 39 L.J. Ch. 645 ; 24 L. T. 13 - 438
Bailey, Snellgrove *v.* - - - - - - - - - - - - 33
Baker *v.* Archer-Shee, [1927] A. C. 844 ; 96 L. J. K. B. 803 ; 137 L. T. 762 - - - - - - - - - - - - 105, 106
Bankes, Floyer *v.* - - - - - - - - - - - - - 412
Banks *v.* Hartland, *re* Hartland - - - - - - - - 219, 224
Bantoft, Richardson *v.*, *re* Briggs - - - - - - - 222, 509
Barber *v.* Cooper, Nesfield, *re* - - - - - - - - - 223, 508
Barker, *re* (1861), 7 H. & N. 109 ; 30 L. J. Ex. 404 ; 5 L. T. 206 - - - 424
Barksdale *v.* Gilliatt (1818), 1 Swan, 562 - - - - - - - - 351
Barnardo's Homes *v.* Special Commissioners, [1921] 2 A. C. 1 ; 90 L. J. K. B. 545 ; 125 L. T. 250 - - - - - - - - 106, 347
Barnes *v.* Rowley (1797), 3 Ves. Jun. 305 - - - - - - - - 358
Barnewell, Wright *v.* - - - - - - - - - - - - 369
Bartholomew *v.* Menzies, *re* Weston - - - - - - - - - 33
Bate *v.* Payne (1849), 13 Q. B. 900 ; 18 L. J. Q. B. 273 - - - - - 374
Bateman, *re*, Attorney-General *v.* Wreford-Brown, [1925] 2 K. B. 429 ; 95 L. J. K. B. 199 ; 134 L. T. 153 - - - - - - 240, 412
Bath, *re*, Thynne *v.* Stewart, [1914] W. N. 188 ; 111 L. T. 153 - - - 222
Baxter, *re*, Baxter *v.* Baxter (1898), 42 S. J. 611 - - - - - 222
Bayley *v.* Tindall (1853), 2 Eq. R. 538 ; 22 L. T. 166 ; 18 Jur. 668 - 376, 489
Beal *v.* Grimthorpe, *re* Grimthorpe - - - - - - - - - 166
Beddington, *re*, Micholls *v.* Samuel, [1900] 1 Ch. 771 ; 69 L. J. Ch. 374 ; 82 L. T. 557 - - - - - - - - - - - - 210
Bedell-Sivright's Curator Bonis, [1924] S. L. T. 17 - - - - - 97
Bedford, Attorney-General *v.* - - - - - - - - - - 430
Beech, *re*, *The Times*, 9th August, 1904 - - - - - - - - 168
Beech, Attorney-General *v.* - - - - - - - - - - 49
Beecham, *re*, Woolley *v.* Beecham (1923), 130 L. T. 558 ; 68 S. J. 208 - - 226
Belfast Banking Co, Cassidy *v.* - - - - - - - - - 33
Belilios, Attorney-General *v.* - - - - - - - - - 113, 440
Benbow, Early *v.* - - - - - - - - - - - - 352
Berchtoldt, Chatfield *v.* - - - - - - - - - - 330, 339
Berry *v.* Gaukroger, [1903] 2 Ch. 116 ; 72 L. J. Ch. 435 ; 88 L. T. 521 - - - - - - - - - - 175, 180, 212, 213, 249
Bignold *v.* Giles (1858), 28 L. J. Ch. 238 ; 32 L. T. 218 ; 7 W. R. 99 - 373, 374
Bird *v.* Grainger, *re* Stoddart - - - - - - - - - - 226
Birtwhistle *v.* Vardill (1840), 7 Cl. & F. 895 ; 9 Bli. N.S. 32 - - - 443
Blackburn & E. Lancs. Royal Infirmary, Johnstone *v.*, *re* Harrison - - 254
Blackwell, *re*, Blackwell *v.* Blackwell, [1929] A. C. 318 ; 98 L. J. Ch. 251 ; 140 L. T. 444 - - - - - - - - - - - - 336
Blackwood *v.* The Queen (1882), 8 A. C. 82 ; 52 L. J. P. C. 10 ; 48 L. T. 441 - - - - - - - - - - - - - 324

PAGE

Bliss *v.* Putnam (1843), 7 Beav. 40 - - - - - - - - - 373
Blythe *v.* Atkinson, *re* Leaper - - - - - - - - - - 33
Boden, Attorney-General *v.* - - - - - - - - - 30, 239
Bogie, Lord Advocate *v.* - - - - - - - - - 13, 329
Bolton Estates Act, 1863, *re*, [1904] 2 Ch. 289 ; 73 L. J. Ch. 688 ; 91 L. T. 259 - - - - - - - - - - - - 23, 220
Booth *v.* New Afrikander Gold Mining Co., [1903] 1 Ch. 295 ; 72 L. J. Ch. 125 ; 87 L. T. 509 - - - - - - - - - - - - 53
Booth *re*, Pleace *v.* Booth, [1916] 1 Ch. 349 ; 85 L. J. Ch. 249 ; 114 L. T. 498 - - - - - - - - - - - - 271, 309
Bourne *v.* Keane, [1919] A. C. 815 ; 89 L. J. Ch. 17 ; 121 L. T. 426 - - 332
Bouts *v.* Ellis (1853), 4 De. G. M. & G. 249 ; 17 Jur. 585 ; 1 W. R. 400 - 33
Bouwens, Attorney-General *v.* - - - - - - - - - 103
Bowerman, *re*, Porter *v.* Bowerman, [1908] 2 Ch. 340 ; 77 L. J. Ch. 594 ; 99 L. T. 7 - - - - - - - - - - - - 208
Bowes, *re*, Strathmore *v.* Vane, [1907] W.N. 198 - - - - - - 376
Bowra *v.* Rhodes (1862), 6 L. T. 560 ; 8 Jur. (N.S.) 1050 ; 10 W. R. 747 360, 374, 377
Boxer, *re*, Morris *v.* Woore, [1910] 2 Ch. 69 ; 79 L. J. Ch. 492 ; 103 L. T. 126 - - - - - - - - - - - - - 221
Brackenbury, Attorney-General *v.* - - - - - - - - - 334
Brassard *v.* Smith [1925] A. C. 371 ; 94 L. J. (P. C.) 81 ; 132 L. T. 647 - 108
Braybrooke *v.* Attorney-General (1861), 9 H. L. C. 150 ; 31 J. L. Ex. 177 ; 4 L. T. 218 - - - - - - - - - - 412, 472
Breslin, Cope *v.* - - - - - - - - - - - - 219
Bridgett & Hayes' Contract, *re*, [1928] Ch. 163 ; 97 L. J. Ch. 33 ; 138 L. T. 106 - - - - - - - - - - - - 172, 491
Brierley (No. 2), Fisher *v.* - - - - - - - - - - 353
Briggs, *re* Richardson *v.* Bantoft, [1914] 2 Ch. 413 ; 83 L. J. Ch. 874 ; 111 L. T. 939- - - - - - - - - - - - 222, 509
Briggs, Tew *v.*, *re* Charlesworth - - - - - - - - - 209
Briscoe, *re*, Royds *v.* Briscoe, [1910] W. N. 251 ; 55 S. J. 93 - - - 221
Brodie, Goddard *v.*, *re* Chisholm - - - - - - - 213, 218, 219
Brooke *v.* Haymes (1868), L. R. 6 Eq. 25 - - - - - - - - 374
Brown *v.* Attorney-General (1898), 79 L. T. 572 ; 15 T. L. R. 109 - - 413
Brown *v.* Smith (1875), 46 L. J. Ch. 866 - - - - - - - 375, 489
Brown, *re*, Turnbull *v.* Royal National Lifeboat Institution, [1916] W. N. 103 ; 60 S. J. 353 - - - - - - - - - - 225
Brown, *re*, Wace *v.* Smith, [1918] W. N. 118 ; 65 S. J. 487 - - - 333
Brown's Trustees *v.* Gow (1902), 5 Fra. 127 ; 40 S. L. R. 62 ; 10 S. L. T. 379 352
Bruce, Attorney-General *v.* - - - - - - - - - 370, 383
Bryan *v.* Mansion (1857), 26 L. J. Ch. 510 ; 29 L. T. 84 ; 3 Jur. (N.S.) 473 - - - - - - - - - - - - 372, 377
Buchan *v.* Lord Advocate, [1909] A. C. 166 ; 78 L. J. P. C. 70 ; 100 L. T. 5 484
Bulkeley *v.* Stephens, [1896] 2 Ch. 241 ; 65 L. J. Ch. 597 ; 74 L. T. 409 - 303
Buller *v.* Anson, *re* Anson - - - - - - - - - - - 231
Bullmore *v.* Wynter (1883), 22 Ch. D. 619 ; 52 L. J. Ch. 456 ; 48 L. T. 309 342
Burns, Attorney-General *v.* - - - - - - - - - - 109
Burrows *v.* Cottrell (1830), 3 Sim. 375 - - - - - - - - 353
Byne *v.* Currey (1834), 2 Cr. & M. 603 ; 3 L. J. Ex. 177 - - - - 352

Callander-Brodie (1904), 12 S. L. T. 474 - - - - - - - - 99
Campbell, Attorney-General *v.* - - - - - - - - 113, 438, 439
Capdevielle, *re* (1864), 2 H. & C. 985 ; 33 L. J. Ex. 306 ; 11 L. T. 89 - - 439
Carr, Griessemann *v.*, *re* Mackay - - - - - - - - - 375
Cartwright *v.* Del Balzo, *re* Orford - - - - - - - - 175, 213

PAGE

Casdagli *v.* Casdagli, [1919] A. C. 145; 88 L. J. P. C. 49; 120 L. T. 52 - 389
Cassel, *re*, Public Trustee *v.* Mountbatten, [1927] 2 Ch. 275; 96 L. J. Ch. 483; 137 L. T. 785 - - - - - - - - - - - 29, 217
Cassidy *v.* Belfast Banking Company (1887), 22 L. R. Ir. 68 - - - 33
Castle *v.* Warland (1863), 32 Beav. 660; 2 N. R. 433; 138 R. R. 901 - - 375
Cavendish, Attorney-General *v.* - - - - - - - - - 344, 346
Cawthorne, *re* (1848), 12 Beav. 56; 18 L. J. Ch. 116 - - - - - 377
Cecil, Attorney-General *v.* - - - - - - - 412, 479, 482
Chamberlain, Attorney-General *v.* - - - - - - - - - 39
Chambres, Attorney-General *v.* - - - - - - - - - 377, 489
Chaplin *v.* Leveson-Gower, *re* Sutherland - - - - - - 272, 308
Chaplin & Others, Petitioners, [1926] S. L. T. 422 - - - - - - 98
Charlesworth, *re*, Tew *v.* Briggs, [1912] 1 Ch. 319; 81 L. J. Ch. 267; 105 L. T. 817 - - - - - - - - - - - - 209
Charlton *v.* Attorney-General (1879), 4 A. C. 427; 49 L. J. Ex. 86; 40 L. T. 760 - - - - - - - - 412, 423, 425, 479
Chattfield *v.* Berchtoldt, L. R. 7 Ch. App. 192; 41 L. J. Ch. 255; 26 L. T. 267 - - - - - - - - - - - - 330, 339
Chatteris *v.* Young (1827), 2 Russ. 183; 26 R. R. 44 - - - - - 352
Chisholm, *re*, Goddard *v.* Brodie, [1902] 1 Ch. 457; 71 L. J. Ch. 289; 86 L. T. 183 - - - - - - - - - 213, 218, 219
Cholmondeley, *re* (1832), 1 Cr. & M. 149; 2 L. J. Ex. 65 - - - - 334
Christie's Trustees, Lord Advocate *v.* - - - - - - - - 451
Cigala's Settlement Trusts, *re* (1878), 7 Ch. D. 351; 47 L. J. Ch. 166; 38 L. T. 439 - - - - - - - - - - - 112, 435
Claremont, *re*, [1923] 2 K. B. 718; 93 L. J. K. B. 147 - - - - 348
Clark, *re* (1906), 40 I. L. T. 117 - - - - - - - - - 42
Clark, *re*, McKechnie *v.* Clark, [1904] 1 Ch. 294; 89 L. T. 736; 73 L. J. Ch. 188 - - - - - - - - - - - - 103, 108
Clark, Wilson *v.*, *re* Wilson - - - - - - - - - 209
Cleave, Attorney-General *v.* - - - - - - - - - 336
Clifton *v.* Strauss, *re* Aschrott - - - - - - - - - 139
Cobham, Attorney-General *v.* - - - - - - - - - 39
Cochrane, *re*, [1906] 2 I. R. 200 - - - - - - - - 43, 44
Cockerell *v.* Essex, *re* Johnston - - - - - - - - 509
Cockerill, *re*, [1929] 2 Ch. 131; 98 L. J. Ch. 281; 141 L. T. 198 - - - 214
Colbourn, Lambert *v.*, *re* Jones - - - - - - - - - 227
Coleman, Horn *v.* - - - - - - - - - - 375
Collier, *re*, [1930] 2 Ch. 37; 99 L. J. Ch. 241 - - - - - - - 83
Colquhoun's Trustees *v.* Colquhoun's Trustee, [1913] S. C. 874; 50 S. L. R. 563 - - - - - - - - - - - - 152, 178
Colville *v.* Inland Revenue Commissioners, [1923] S. C. 423; 60 S. L. R. 248 365
Combined Incandescent Mantles Syndicate, Sherwell *v.* - - - - - 53
Commissioner of Stamps *v.* Hope, [1891] A. C. 476; 60 L. J. P. C. 44; 65 L. T. 268 - - - - - - - - - - - - 103
Commissioner of Stamp Duties *v.* Salting, [1907] A. C. 449; 76 L. J. P. C. 87; 97 L. T. 225 - - - - - - - - - - - 106
Commissioners of Inland Revenue, De Freyne *v.* - - - - - 152, 155
Commissioners of Inland Revenue, Levene *v.* - - - - - - - 237
Commissioners of Inland Revenue *v.* Lysaght, [1928] A. C. 234; 97 L. J. K. B. 385; 139 L. T. 6 - - - - - - - - - - - 237
Commissioners of Stamps and Taxes, The Queen *v.* - - - - - 337
Cook *v.* Culverhouse, *re* Culverhouse - - - - - - - 186, 454
Coole, Attorney-General *v.* - - - - - - - - 21, 27, 28, 254

PAGE

Cooper, Barber *v.*, *re* Nesfield - - - - - - - - - 223, 508
Cooper *v.* Day (1817), 3 Mer. 154 - - - - - - - - - 353
Cooper *v.* Trewby (1860), 28 Beav. 194; 8 W. R. 299 - - - - 502
Cope *v.* Breslin, [1903] 1 I. R. 418 - - - - - - - - 219
Corbould *v.* Kennedy, *re* Kennedy - - - - - - - - - 354
Cotter, Jameson *v.*, *re* Wheeler - - - - - - - - - 205
Cottrell, Burrows *v.* - - - - - - - - - - - - - 353
Cowley, *re* (1866), L. R. 1 Ex. 288; 4 H. & C. 476; 35 L. J. Ex. 177; 14 L. T. 663 - - - - - - - - - - - 460
Cowley *v.* Inland Revenue Commissioners, [1899] A. C. 198; 68 L. J. Q. B. 435; 80 L. T. 361 - - - - - - - 14, 24, 152, 154, 178, 467
Cowley *v.* Wellesley (1866), 35 Beav. 635, 642 - - - - - - - 489
Coxwell, *re*, Kinloch Cooke *v.* Public Trustee, [1910] 1 Ch. 63; 79 L. J. Ch. 62; 101 L. T. 627 - - - - - - - - - - - 222
Crocker, *re*, Crocker *v.* Crocker, [1916] 1 Ch. 25; 85 L. J. Ch. 179; 114 L. T. 61 - - - - - - - - - - - - 188, 210
Crow *v.* Robinson (1862), 4 De G. F. & J. 337; 31 L. J. Ch. 516; 6 L. T. 372 - - - - - - - - - - - - - 360
"Crown," Cobham, *re* The, *ex parte* Ashby's Cobham Brewery Company Limited - - - - - - - - - - - - - 300
Cruise's Estate, *re* (1871), 51 L. T. 195 - - - - - - - - 499
Cullen *v.* Attorney-General for Ireland (1866), L. R. 1 E. & I. App. 190; 14 L. T. 644 - - - - - - - - - - - 335
Culverhouse, *re*, Cook *v.* Culverhouse, [1896] 2 Ch. 251; 65 L. J. Ch. 484; 74 L. T. 347 - - - - - - - - - - 186, 454
Cunningham, *ex parte*, *in re* Mitchell (1884), 13 Q. B. D. 418; 53 L. J. Ch. 1067; 51 L. T. 447 - - - - - - - - - - - 389
Cunnington, Huey *v.*, *re* Gardner - - - - - - - - - 335
Currey, Byne *v.* - - - - - - - - - - - - - - 352
Cust *v.* Inland Revenue Commissioners (1917), 91 Estates Gazette 11 - - 300

Dardier, Attorney-General *v.* - - - - - - - - - 348, 539
Davies *v.* Witts, *re* Hole - - - - - - - - - - - 208
Dawkins *v.* Tatham (1829), 2 Sim. 492 - - - - - - - - 351
Dawson *v.* Hearn, 1 R. & M. 606; 9 L. J. (o. s.) Ch. 249 - - - - 358
Day, Cooper *v.* - - - - - - - - - - - - - - 353
Day *v.* Turnell, *re* Higgins - - - - - - - - - - - 508
Dean, *re* (1889), 41 Ch. D. 552; 58 L. J. Ch. 693; 60 L. T. 813 - - - 331
De Freyne *v.* Inland Revenue Commissioners, [1916] 2 I. R. 456 - 152, 155
De Lancey, *re* (1870), L. R. 5 Ex. 102; 39 L. J. Ex. 76; 22 L. T. 239 - 327
De Lancey *v.* The Queen (1872), L. R. 7 Ex. 140 - - - - - 327
Delaney, Attorney-General for Ireland *v.* - - - - - - - - 390
Del Balzo, Cartwright *v.*, *re* Orford - - - - - - - - 175, 213
De Preville, Attorney-General *v.* - - - - - - - - - - 50
Digby, Van Grutten *v.* - - - - - - - - - - - - 434
Dobree, Attorney-General *v.* - - - - - - - - - 82, 90, 239
Dodd, Attorney-General *v.* - - - - - - - - - - - 6
Dodd, *re*, Dodd *v.* Dodd, [1918] W. N. 100 - - - - - 176, 488
Dodington, Attorney-General *v.* - - - - - - - - 147, 249, 271
Donelan's Estate, *re*, [1902] 1 I. R. 109 - - - - - - - - 198
Dotterill, Gosden *v.* - - - - - - - - - - - - 351
Douglas's Executors, Lord Advocate *v.* - - - - - - - - 166
Dowling, *re*, Dowling *v.* Fenwick (1913), 108 L. T. 671 - - - 218, 219
D'Oyly, *re*, Vertue *v.* D'Oyly, [1917] 1 Ch. 556; 86 L. J. Ch. 373; 116 L. T. 442 - - - - - - - - - - - - - 225

PAGE

Drake *v.* Attorney-General (1843), 10 Cl. & F. 257 ; 52 R. R. 131 ; 8 E. R. 739 - - - - - - - - - - - - 334, 335, 428
Drake, *re*, Drake *v.* Wilson, [1926] Ch. 559 ; 95 L. J. Ch. 386 ; 134 L. T. 362 - - - - - - - - - - - - 214, 223, 224
Drury Lowe's Marriage Settlement, *re*, *ex parte* Sitwell (1888), 21 Q. B. D. 466 ; 59 L. T. 539 - - - - - - - - - - - - 484
Ducroz, Stokes *v.*, *re* Stokes - - - - - - - - - - 106, 327
Duffield *v.* Elwes (1827), 1 Bligh (N. S.) 497 - - - - - - - - 33
Dugdale *v.* Meadows (1870), L. R. 6 Ch. App. 501 ; 40 L. J. Ch. 140 ; 24 L. T. 113 - - - - - - - - - - - - 505
Duncan's Trustees *v.* M'Cracken (1888), 15 Rett. 638 ; 25 S. L. R. 551 - - 438
Duncannon *v.* Manchester, *re* Manchester - - - - - - - - - 166
Duppa, *re*, Fowler *v.* Duppa, [1912] 2 Ch. 445 ; 81 L. J. Ch. 737 ; 107 L. T. 522 - - - - - - - - - - - - 361

Early *v.* Benbow (1846), 2 Coll. 342, 354 ; 10 Jur. 280 - - - - - - 352
Edwards *v.* Smyth, *re* Smyth - - - - - - - - - - 211
Egmont's Settled Estates, *re*, Lefroy *v.* Egmont, [1912] 1 Ch. 251 ; 81 L. J. Ch. 250 ; 105 L. T. 292 - - - - - - - - - 202, 216, 508
Ellesmere *v.* Inland Revenue Commissioners, [1918] 2 K. B. 735 ; 88 L. J. K. B. 337 ; 119 L. T. 568 - - - - - - - - - - - 133
Ellis, Bouts *v.* - - - - - - - - - - - - - - 33
Elwes, *re* (1858), 3 H. & N. 719 ; 28 L. J. Ex. 46 ; 32 L. T. 179 - - 460
Elwes, Duffield *v.* - - - - - - - - - - - - - - 33
Engelbach, *re*, Tibbetts *v.* Engelbach, [1924] 2 Ch. 348 ; 93 L. J. Ch. 616 ; 130 L. T. 401 - - - - - - - - - - - - 84
Erie Beach Co. Ltd. *v.* Attorney-General for Ontario, [1930] A. C. 161 ; 99 L. J. P. C. 38 ; 142 L. T. 156 - - - - - - - - - - 108
Essex, Cockerell *v.*, *re* Johnston - - - - - - - - - - 509
Eve, *re*, Hall *v.* Eve, [1917] 1 Ch. 562 ; 86 L. J. Ch. 396 ; 116 L. T. 682 - - 226
Ewing's Trustees *v.* Mathieson (1906), 44 S. L. R. 12 ; 14 S. L. T. 135 - - 376
Exmouth's Annuity, *re*, [1925] Ch. 280 ; 94 L. J. Ch. 208 ; 133 L. T. 39 23, 125
Eykyn's Trusts, *re* (1877), 6 Ch. D. 115 ; 37 L. T. 261 - - - - - 79
Eyre, *re*, [1907], 1 K. B. 331 ; 76 L. J. K. B. 227 ; 96 L. T. 236 - - 7, 139
Eyre *v.* Monro (1857), 3 K. & J. 305 ; 26 L. J. Ch. 757 ; 5 W. R. 870 - - 330
Eyres, Attorney-General *v.* - - - - - - - - - - 238, 415

Farquharson's Trustees, [1915] 2 S. L. T. 176 - - - - - - - - 98
Farrell, Attorney-General *v.* - - - - - - - - - - - 37, 42
Farwell *v.* Seale (1849), 3 De G. & Sm. 359 ; 18 L. J. Ch. 189 ; 13 Jur. 483 373
Favorke *v.* Steinkopff, *re* Steinkopff - - - - - - - - - - 106
Featherley, Sutton *v.*, *re* Swinburne - - - - - - - - - - 33
Felce, Attorney-General *v.* - - - - - - - - - - - 436
Fenwick, Dowling *v.*, *re* Dowling - - - - - - - - - - 218, 219
Fenwick, *re*, Lloyds Bank *v.* Fenwick, [1922] 2 Ch. 775 ; 92 L. J. Ch. 97 ; 128 L. T. 191 - - - - - - - - - - - - 225
Fernichough, Wilkinson *v.*, *re* Howe - - - - - - - - - 352
Ferrybridge, R. *v.* - - - - - - - - - - - - - 148
Finch *v.* Smith, *re* Ainsworth - - - - - - - - - - - 374
Findlay (Kennedy's Factor), H. M. Advocate *v.* - - - - - - 19
Fischer *v.* Seafield (1825), 4 Shaw 194 ; S. R. R. 1 S. 685 - - - - - 338
Fisher *v.* Brierley (No. 2) (1861), 30 Beav. 267 - - - - - - - 353
Fitzgerald, *re*, Surman *v.* Fitzgerald, [1904] 1 Ch. 573 ; 73 L. J. Ch. 436 ; 90 L. T. 266 - - - - - - - - - - - - 434

PAGE

Fitzhardinge, *re*, Fitzhardinge *v.* Jenkinson (1899), 80 L. T. 376; 15 T. L. R. 225 - - - - - - - - - - - - - 223
Fleming (or Robertson), Lord Advocate *v.* - - - - - 85, 86, 420
Floyer *v.* Attorney-General - - - - - - - - - - 412, 472
Floyer *v.* Bankes (1863), 3 De G. J. & S. 306; 33 L. J. Ch. 1; 9 L. T. 353 - 412
Foley, *re*, *The Times*, 18th May, 1898 - - - - - - - - 268
Forbes *v.* Forbes (1854), Kay 341; 2 Eq. R. 178; 23 L. J. Ch. 724 - - 388
Forbes *v.* Public Trustee, *re* Tollemache - - - - - - - - 210
Forbes *v.* Steven (1870), L. R. 10 Eq. 178; 39 L. J. Ch. 485; 22 L. T. 703 106, 327
Ford *v.* Ruxton (1844), 1 Coll. 403, 408 - - - - - - - - 351
Foster *v.* Ley (1835), 2 Bing. N. C. 269; 2 Scott 438 - - 328, 374, 377
Fothringham, Lord Advocate *v.* - - - - - - - - - 25
Fowkes *v.* Pascoe (1875), L. R. 10 Ch. App. 343; 44 L. J. Ch. 367; 32 L. T. 545 - - - - - - - - - - - - - 79
Fowler *v.* Duppa, *in re* Duppa - - - - - - - - - 361
Fowler, Petitioner, [1916] 2 S. L. T. 160 - - - - - - - - 99
Fox (Lane), Attorney-General *v.* - - - - - - - - - 3, 49
Franklin, Pennell *v.*, *re* White - - - - - - - - - - 332
Freckleton's Judicial Factor, Lord Advocate *v.* - - - - - - 338
Freeman, Hales *v.* - - - - - - - - - - - - 374
Fryer *v.* Morland (1876), 3 Ch. D. 675; 45 L. J. Ch. 817; 35 L. T. 458 412, 517

Gardiner, Hacket *v.*, *re* Hacket - - - - - - - - - 218
Gardner, *re*, Huey *v.* Cunnington, [1920] 2 Ch. 523; 89 L. J. Ch. 649; 124 L. T. 49 - - - - - - - - - - - - 335
Gaukroger, Berry *v.* - - - - - - - - - 175, 180, 212, 213, 249
Gell, Attorney-General *v.* - - - - - - - - - - - 418
Gibson, Lord Advocate *v.* - - - - - - - - - - - 436
Giles, Attorney-General *v.* - - - - - - - - - - 369, 373
Giles, Bignold *v.* - - - - - - - - - - - - 373, 374
Gilliatt, Barksdale *v.* - - - - - - - - - - - - 351
Glasgow, Lord Advocate *v.* - - - - - - - - 430, 468, 484
Glasgow and Transvaal Options, Sleigh *v.* - - - - - - - - 53
Glen *v.* Inland Revenue Commissioners, [1926] S. C. 44; [1925] S. L. T. 657 279
Glossop, Attorney-General *v.* - - - - - - - - 154, 252, 253
Goddard *v.* Brodie, *re* Chisholm - - - - - - - - 213, 218
Goldstein *v.* Salvation Army Assurance Society, [1917] 2 K. B. 291; 86 L. J. K. B. 793; 117 L. T. 63 - - - - - - - - - 305
Gordon, Lord Advocate *v.* (1895) - - - - - - - - - 451
Gordon, Lord Advocate *v.* (1901) - - - - - - - - - 372
Gore, Saunders *v.*, *re* Saunders - - - - - - - - - 508
Gosden *v.* Dotterill (1832), 1 My. & K. 56, 60; 2 L. J. Ch. 15 - - - 351
Gosman *re*, (1881), 17 Ch. D. 771 - - - - - - - - - 539
Gow, Brown's Trustees *v.* - - - - - - - - - - 352
Grainger, Bird *v.*, *re* Stoddart - - - - - - - - - - 226
Grant, *re*, Nevinson *v.* United Kingdom Temperance & General Provident Institution, [1915] W. N. 88; 85 L. J. Ch. 31; 112 L. T. 1126 221, 223
Gray, *re*, Gray *v.* Gray, [1896] 1 Ch. 620; 65 L. J. Ch. 462; 74 L. T. 275 218, 219
Greenock Medical Aid Society, Shaw's Trustees *v.* - - - - - - 336
Grey *v.* Attorney-General, [1900] A. C. 124; 69 L. J. Q. B. 308; 82 L. T. 62 42, 43
Grey, Payne *v.*, *re* Stamford & Warrington - - - - - - - 214
Gribble *v.* Webber, *re* Webber - - - - - - - - 203, 212

PAGE

Griessemann *v.* Carr, *re* Mackay - - - - - - - - - - 375
Grimthorpe, *re*, Beal *v.* Grimthorpe, *The Times*, 6th June, and 1st and 8th August, 1905 - - - - - - - - - - - 166
Gunn, *in the Goods of* (1884), 9 P. D. 242 ; 53 L. J. P. 107 - - - - - 6
Gunn, *re*, Harvey *v.* Gunn, [1916] W. N. 283 - - - - - - - 226
Gunning's Trustees, H. M. Advocate *v.* - - - - - - - - 149
Gunning's Trustees, Inland Revenue *v.* - - - - - - - - 11, 40

Hacket, *re*, Hacket *v.* Gardiner, [1907] 1 Ch. 385 ; 76 L. J. Ch. 249 ; 96 L. T. 420 - - - - - - - - - - - - - 218
Hales *v.* Freeman (1819), 1 Brod. & B. 391 - - - - - - - - 374
Hall *v.* Eve, *re* Eve - - - - - - - - - - - - - 226
Hall-Dare, *re*, Le Marchant *v.* Lee Warner, [1916] 1 Ch. 272 ; 85 L. J. Ch. 365 ; 114 L. T. 559 - - - - - - - - - - - 176
Hamilton, *re* (1905), 39 I. L. T. 272 - - - - - - - - - - 468
Hamilton *v.* Lord Advocate, [1920] A. C. 50 ; 88 L. J. P. C. 150 ; 122 L. T. 193 ; [1919] S. C. 90 ; 56 S. L. R. 524 ; [1919] 2 S. L. T. 149 - 411, 444
Hamilton, Wills *v.*, *re* Wills - - - - - - - - - - 215, 349
"Hand & Spear," *re* The, *ex parte* Ashby's Staines Brewery Co., Limited - 300
Hannen, Attorney-General *v.* - - - - - - - - - - - 29
Hargreaves, Meyrick *v.*, *re* Hargreaves - - - - - - - 219, 222
Harris, *re* (1852), 7 Ex. 344 ; 21 L. J. Ex. 92 - - - - - - - 331
Harris's Trustees *v.* Harris (1904), 6 Fra. 470 ; 41 S. L. R. 357 ; 11 S. L. T. 726 - - - - - - - - - - - - - 98, 491
Harrison, *re*, Johnstone *v.* Blackburn & East Lancashire Royal Infirmary, [1918] 2 Ch. 374 ; 88 L. J. Ch. 133 ; 120 L. T. 187 - - - - - 254
Harrison *v.* Ward, *re* Ward - - - - - - - - - - 151
Harrowby, Johnstone *v.* - - - - - - - - - - - - 353
Hartland, *re*, Banks *v.* Hartland [1911] 1 Ch. 459 ; 80 L. J. Ch. 305 ; 104 L. T. 490 - - - - - - - - - - - 218, 224
Harvey *v.* Gunn, *re* Gunn - - - - - - - - - - - 226
Harvey's Trustees, Lord Advocate *v.* - - - - - - - 245, 249
Hatch, *re*, Hatch *v.* Hatch, [1916] W. N. 240 ; 86 L. J. Ch. 454 ; 115 L. T. 472 - - - - - - - - - - - - - 226
Hawkins, Attorney-General *v.* - - - - - - - - - 91, 239
Hawkins, Oakeshott *v.*, *re* Acklom - - - - - - - - - 31
Hay, Attorney-General *v.* - - - - - - - - - - - 247
Haygarth's Trusts, *re* (1883), 22 Ch. D. 545 ; 52 L. J. Ch. 416 ; 48 L. T. 24 519
Haymes, Brooke *v.* - - - - - - - - - - - - - 374
Hearn, Dawson *v.* - - - - - - - - - - - - - 358
Henderson's Trustees, Lord Advocate *v.* - - - - - - - - 25
Heywood, Attorney-General *v.* - - - - - - - - - - 42
Heywood-Lonsdale's Trustees, H. M. Advocate *v.* - - - - - 36, 39, 240
Hicklin, *re*, Public Trustee *v.* Hoare, [1917] 2 Ch. 278 ; 86 L. J. Ch. 740 ; 117 L. T. 403 - - - - - - - - - - - 212, 213
Higgins, Attorney-General *v.* - - - - - - - - - - 108
Higgins, *re*, Day *v.* Turnell (1885), 31 Ch. D. 142 ; 55 L. J. Ch. 235 ; 54 L. T. 199 - - - - - - - - - - - - - 508
Higgins *v.* The King (1930), 9 A. T. C. 158 - - - - - - - 337
H. M. Advocate *v.* Alexander's Trustees (1905), 7 Fra. 367 ; 42 S. L. R. 307 149, 153
H. M. Advocate *v.* Findlay (Kennedy's Factor) (1890), 28 S. L. R. 596 - 19
H. M. Advocate *v.* Gunning's Trustees (1902), 39 S. L. R. 534 ; 9 S. L. T. 403 149

PAGE

H. M. Advocate *v.* Heywood-Lonsdale's Trustees (1906), 8 Fra. 724; 43 S.L.R. 529; 13 S. L. T. 827, 975 - - - - - - - 36, 39, 240
H. M. Advocate *v.* M'Taggart Stewart (1906), 8 Fra. 579; 43 S. L. R. 465; 13 S. L. T. 945 - - - - - - - - - - - 41
Hoare *v.* Osborne (1866), L. R. 1 Eq. 585; 35 L. J. Ch. 345; 14 L. T. 9 - 348
Hoare, Public Trustee *v.*, *re* Hicklin - - - - - - - 212, 213
Hodgson, Kenlis *v.* - - - - - - - - - - - 326
Hodgson, Sharpe *v.*, *re* Pimm - - - - - - - - - - 221
Holbrook, Attorney-General *v.* - - - - - - - - - - 327
H. M. Advocate *v.* Routledge's Trustees, [1907] S. C. 327; 44 S. L. R. 305; 14 S. L. T. 735 - - - - - - - - - - 334
H. M. Advocate *v.* Warrender's Trustees (1906), 8 Fra. 371; 43 S. L. R. 278; 13 S. L. T. 724 - - - - - - - - - - - 150
Hole, *re*, Davies *v.* Witts, [1906] 1 Ch. 673; 75 L. J. Ch. 362; 94 L. T. 451 208
Hood, Poulett *v.* - - - - - - - - - - 222, 509
Hope, Attorney-General for Ireland *v.* - - - - - - - - 390
Hope, Commissioner of Stamps *v.* - - - - - - - - - 103
Horn *v.* Coleman (1856), 26 L. J. Ch. 213; 28 L. T. 696; 2 Jur. (N.S.) 1127 375
Horrex, *re*, *The Times*, 9th March, 1910 - - - - - - - 168
Hoskin's Trusts, *re* (1877), 6 Ch. D. 281; 46 L. J. Ch. 274 - - - 337, 367
Howe, Attorney-General *v.* - - - - - - - - - 130, 161
Howe, *re*, Howe *v.* Kingscote, [1903] 2 Ch. 69; 72 L. J. Ch. 461; 88 L. T. 438 - - - - - - - - - - - 190, 216
Howe, *re*, Wilkinson *v.* Fernichough, [1910] W. N. 190; 103 L. T. 185; 54 S. J. 704 - - - - - - - - - - - 352
Hubbock, Attorney-General *v.* - - - - - - - - - 106
Hudson, Arnholz *v.*, *re* Northcliffe - - - - - - - - 14, 29, 365
Hudson, *re*, Spencer *v.* Turner, [1911] 1 Ch. 206; 80 L. J. Ch. 129; 103 L. T. 718 - - - - - - - - - - - 34, 188, 207
Huey *v.* Cunnington, *re* Gardner - - - - - - - - - 335
Hughes, Williams *v.* - - - - - - - - - - - 353

Inland Revenue *v.* Gunning's Trustees, [1907] S. C. 800; 44 S. L. R. 514; 14 S. L. T. 946 - - - - - - - - - - 11, 40
Inland Revenue *v.* Lyell, [1918] S. C. 125; 55 S. L. R. 151 - 239, 240, 252
Inland Revenue *v.* Maclachlan (1899), 1 Fra. 917; 36 S. L. R. 727; [1900] W. N. 204 - - - - - - - - - - - 26, 177
Inland Revenue *v.* Montgomery's Trustees (1914), 51 S. L. R. 377 - - 252
Inland Revenue *v.* Scott's Trustees, [1918] S. C. 720; 55 S. L. R. 654; [1918] 2 S. L. T. 97 - - - - - - - - - - 30, 88
Inland Revenue Commissioners, Colville *v.* - - - - - - - 365
Inland Revenue Commissioners, Cowley *v.* - - 14, 24, 152, 154, 178, 467
Inland Revenue Commissioners, Cust *v.* - - - - - - - - 300
Inland Revenue Commissioners, Ellesmere *v.* - - - - - - - 133
Inland Revenue Commissioners, Glen *v.* - - - - - - - - 279
Inland Revenue Commissioners, Lawson *v.* - - - - - - - 110
Inland Revenue Commissioners, McConnell's Trustees *v.* - - - - - 135
Inland Revenue Commissioners, Nevill *v.* - - - - - - 23, 94, 124
Inland Revenue Commissioners *v.* Priestley, [1901] A. C. 208; 70 L. J., P. C. 41; 84 L. T. 700 - - - - - - - - 147, 245, 249, 271
Inland Revenue Commissioners, Richardson *v.* - - - - - - - 87
Inland Revenue Commissioners, Salvesen's Trustees *v.* - - - - - 138
Inland Revenue Commissioners, Strathcona *v.* - - - - - - - 35

PAGE

Inland Revenue Commissioners, Welby-Dawson *v.* - - - - - - 300
Jaffrey, Lord Advocate *v.* - - - - - - - - - - - 389
Jameson, Attorney-General for Ireland, *v.* - - - - - - - - 138
Jameson *v.* Cotter, *re* Wheeler - - - - - - - - - - 205
Jarman, Ring *v.* - - - - - - - - - - - - 418
Jenkinson, Fitzhardinge *v.*, *re* Fitzhardinge - - - - - - - 223
Jervis *v.* Wolferstan (1874), L. R. 18 Eq. 18; 43 L. J. Ch. 809 - - - 330
Jewish Colonization Association, Attorney-General *v.* - - - 112, 436
Johnson, Attorney-General *v.*, [1903] - - - - - - 46, 240, 432
Johnson, Attorney-General *v.*, [1907] - - - - - - - 108, 434
Johnston, *re*, Cockerell *v.* Essex (1884), 26 Ch. D. 538; 53 L. J. Ch. 645; 52 L. T. 44 - - - - - - - - - - - - - 509
Johnstone *v.* Blackburn & East Lancashire Royal Infirmary, *re* Harrison - 254
Johnstone *v.* Harrowby (1859), 1 De G. F. & J. 183, 192; 29 L. J. Ch. 145; 1 L. T. 390 - - - - - - - - - - - - 353
Jolley, *re*, Neal *v.* Jolley (1901), 17 T. L. R. 244 - - - - - 208
Jones, *re*, Lambert *v.* Colbourn, [1928] W. N. 227 - - - - - 227
Jones's Trust, *re* (1852), 21 L. J. Ch. 566 - - - - - - - 371

Keane, Bourne *v.* - - - - - - - - - - - - 332
Kekewich *v.* Kekewich (1909), 101 L. T. 887 - - - - - - 224
Kenlis *v.* Hodgson, [1895] 2 Ch. 458; 64 L. J. Ch. 585; 72 L. T. 866 - 326
Kennedy, *re*, Corbould *v.* Kennedy, [1917] 1 Ch. 9; 86 L. J. Ch. 40; 115 L. T. 690 - - - - - - - - - - - - 354
Kennedy's Factor (Findlay), H. M. Advocate *v.* - - - - - - - 19
Kidd & Gibbons Contract, *re*, [1893] 1 Ch. 695; 62 L. J. Ch. 436; 68 L. T. 647 - - - - - - - - - - - - - 502
Kiddell, Sanders *v.* - - - - - - - - - - - - 353
King, The, Higgins *v.* - - - - - - - - - - - - 337
King, The, *v.* Lovitt, [1912] A. C. 212; 81 L. J. P. C. 140; 105 L. T. 650 - 104
King, The, Payne *v.* - - - - - - - - - - - - 104
King, The, Toronto General Trusts Corporation *v.* - - - - - - 103
Kingscote, Howe *v.*, *re* Howe's Settled Estates - - - - - 190, 216
Kinloch-Cooke *v.* Public Trustee, *re* Coxwell - - - - - - 222

Laidlaw, *re*, Wilkinson *v.* Lyde, [1930] W. N. 206 - - - - 225, 352
Lake, White *v.* - - - - - - - - - - - - - 509
Lambert, Colbourn *v.*, *re* Jones - - - - - - - - - - 227
Lambert, *re*, Public Trustee *v.* Lambert (1916), 85 L. J. Ch. 279; 114 L. T. 453 - - - - - - - - - - - - - 8
Lane Fox, Attorney-General *v.* - - - - - - - - - - - 3, 49
Langham's Contract, *re* (1890), 60 L. J. Ch. 110; 39 W. R. 156 - - 223, 502
Laurie, Petitioner (1898), 25 Rett. 636; 35 S. L. R. 496; 5 S. L. T. 334 - 98
Law Reversionary Interest Society, Solicitor-General *v.* - - 455, 473, 482, 502
Lawson *v.* Inland Revenue Commissioners, [1896] 2 I. R. 418; 29 I. L. T. 141; [1896] W. N. 145 - - - - - - - - - - - 110
Leaper, *re*, Blythe *v.* Atkinson, [1916] 1 Ch. 579; 85 L. J. Ch. 644; 114 L. T. 1137 - - - - - - - - - - - - 33
Learmonth, Nisbett's Trustees *v.* - - - - - - - - - 344, 372
Leconfield, *re*, Wyndham *v.* Leconfield (1904), 90 L.T. 399; 20 T.L.R. 347 205, 509
Lee, *re*, Treasury Solicitor *v.* Parrott, [1918] 2 Ch. 320; 87 L. J. Ch. 594; 119 L. T. 562 - - - - - - - - - - - - 33
Lee Warner, Le Marchant *v.*, *re* Hall-Dare - - - - - - - - 176
Lefroy *v.* Egmont, *re* Egmont's Settled Estates - - - - 202, 216, 508

PAGE

Le Marchant *v.* Lee Warner, *re* Hall-Dare - - - - - - - - 176
Lethbridge *v.* Attorney-General, [1907] A. C. 19; 76 L. J. K. B. 84; 95 L. T. 842 - - - - - - - - - - - - 91, 239
Levene *v.* Commissioners of Inland Revenue, [1928] A. C. 217; 97 L. J. K. B. 377; 139 L. T. 1 - - - - - - - - - - 237
Leventhorpe *v.* Palmer, *re* Palmer - - - - - - - - - - 223
Leveson-Gower, Chaplin *v.*, *re* Sutherland - - - - - - - 272, 308
Ley, Foster *v.* - - - - - - - - - - - - - - 328, 374, 377
Lilford *v.* Attorney-General (1867), L. R. 2 E. & I. App. 63; 36 L. J. Ex. 116; 16 L. T. 184 - - - - - - - - - - 454
Littledale, Attorney-General *v.* - - - - - - - - - - 514
Llewellyn *v.* Washington, *re* Maddock - - - - - - - - 335
Lloyds Bank *v.* Fenwick, *re* Fenwick - - - - - - - - - 225
Locker, Salt *v.*, *re* Parker-Jervis - - - - - - - - - 216, 224
Logue, O'Hanlon *v.* - - - - - - - - - - - - - 390
Lomas, Attorney-General *v.* - - - - - - - - - - - 6
Lomer, *re*, Public Trustee *v.* Victoria Hospital for Children, [1929] 1 Ch. 731; 98 L. J. Ch. 201; 140 L. T. 687 - - - - - - - - 224
Londesborough, Attorney-General *v.* - - - - - - - - - 248
Londesborough *v.* Somerville (1854), 19 Beav. 295, 301; 23 L. J. Ch. 646 - 353
Lord Advocate *v.* Bogie, [1894] A. C. 83; 63 L. J. P. C. 85; 70 L. T. 533; 21 Rett. 6; 31 S. L. R. 627, 920 - - - - - - - - 13, 329
Lord Advocate, Buchan *v.* - - - - - - - - - - - - 484
Lord Advocate *v.* Christie's Trustees (1905), 12 S. L. T. 690 - - - 451
Lord Advocate *v.* Douglas's Executors, [1912] 1 S. L. T. 216 - - - 166
Lord Advocate *v.* Fleming (or Robertson), [1897] A. C. 145; 66 L. J., P. C. 41; 76 L. T. 125 - - - - - - - - - - 85, 86, 420
Lord Advocate *v.* Fothringham, [1924] S. L. T. 2; [1924] S. C. 52; 61 S. L. R. 159 - - - - - - - - - - - - 25
Lord Advocate *v.* Freckleton's Judicial Factor (1894), 21 Rett. 743; 31 S. L. R. 637; [1896] W. N. 110 - - - - - - - - - 338
Lord Advocate *v.* Gibson (1882), 10 Rett. 224; 20 S. L. R. 161 - - - 436
Lord Advocate *v.* Glasgow (1875), 2 Rett. 317; 12 S. L. R. 215 - 430, 468, 484
Lord Advocate *v.* Gordon (1895), 22 Rett. 639; 32 S. L. R. 532; 2 S. L. T. 34; [1896] W. N. 134 - - - - - - - - - - 451
Lord Advocate *v.* Gordon (1901), 8 S. L. T. 439 - - - - - - - 372
Lord Advocate, Hamilton *v.* - - - - - - - - - - 411, 444
Lord Advocate *v.* Harvey's Trustees (1901), 4 Fra. 43; 39 S. L. R. 71; 9 S. L. T. 244 - - - - - - - - - - 245, 249
Lord Advocate *v.* Henderson's Trustees (1905), 7 Fra. 963; 42 S. L. R. 720; 13 S. L. T. 259 - - - - - - - - - - - - 25
Lord Advocate *v.* Jaffrey, [1921] 1 A. C. 146; 89 L. J. P. C. 209; 124 L. T. 129; [1920] S. C. 171; 57 S. L. R. 535; [1920] 2 S. L. T. 240 389
Lord Advocate *v.* Macalister, [1924] A. C. 586; 93 L. J. P. C. 220; 131 L. T. 545; [1924] S. C. 117; 61 S. L. R. 482; [1924] S. L. T. 437, 415, 444, 499
Lord Advocate, Macfarlane *v.* - - - - - - - - - - - 326
Lord Advocate *v.* Mackenzie's Trustees (1905), 42 S. L. R. 584; S. L. T. 758 245
Lord Advocate *v.* Marshall (1893), 30 S. L. R. 599 - - - - - - 449
Lord Advocate *v.* McKersies (1881), 19 S. L. R. 438 - - - - - 433, 536
Lord Advocate *v.* Miller's Trustees (1884), 11 Rett. 1046; 21 S. L. R. 709 - 354
Lord Advocate *v.* Moray (Countess), [1905] A. C. 531; 74 L. J. P. C. 122; 93 L. T. 569; 7 Fra. 116; 42 S. L. R. 839; 13 S. L. T. 307 - 9, 99, 231
Lord Advocate *v.* Moray (Earl), [1917] 1 S. L. T. 168 - - - - 95

PAGE

Lord Advocate *v.* Moray (Earl), [1919] 2 S. L. T. 258 - - - 96, 271
Lord Advocate *v.* Murray (Freckleton's Judicial Factor) (1894), 21 Rett. 743; 31 S. L. R. 637; [1896] W. N. 110 - - - - - - 338
Lord Advocate *v.* Pringle (1878), 5 Rett. 912; 15 S. L. R. 624 - - 296
Lord Advocate *v.* Reid's Trustees, [1921] 2 S. L. T. 38 - - - - 294
Lord Advocate *v.* Robert's Trustees (1857), 20 Dun. 449; S. R. R. 10D. 1016 - - - - - - - - - - - - 421
Lord Advocate *v.* Robertson (or Fleming), [1897] A. C. 145; 66 L. J. P. C. 41; 76 L. T. 125 - - - - - - - - - 85, 86, 420
Lord Advocate *v.* Sidgwick (1877), 4 Rett. 815; 14 S. L. R. 522 - 148, 413
Lord Advocate, Sprot's Trustees *v.* - - - - - - - - - 161
Lord Advocate *v.* Stewart, [1902] A. C. 344; 71 L. J. P. C. 66; 86 L. T. 603; 4 Fra. (H. L.) 11; 39 S. L. R. 617 - - - - - - - 99
Lord Advocate *v.* Stewart's Trustees (1899), 1 Fra. 416; 36 S. L. R. 297; 6 S. L. T. 163, 289; [1899] W. N. 198 - - - - - - - 13
Lord Advocate *v.* Taylor (Miller's Trustees) (1884), 11 Rett. 1046; 21 S.L.R. 709 - - - - - - - - - - - - - 354
Lord Advocate, Warren's Trustees *v.* - - - - - - - - 280
Lord Advocate *v.* Watherston's Trustees (1901), 3 Fra. 627; 38 S. L. R. 467; [1902] W. N. 170 - - - - - - - - - - 338
Lord Advocate *v.* Wood's Trustees, [1910] 1 S. L. T. 186- - - - 134
Lord Advocate *v.* Wotherspoon's Trustees, [1930] S. L. T. 82 - - 345, 364
Lordan, Attorney-General for Ireland *v.* - - - - - - - 378, 496
Lorton, Attorney-General for Ireland *v.* - - - - - - - - 460
Louch *v.* Peters (1834), 1 My. & K. 489; 3 L. J. Ch. 167 - - - - 351
Lovelace, *re* (1859), 4 De G. & J. 340; 28 L. J. Ch. 489; 33 L. T. 230 - 10, 111, 422, 427, 437
Lovitt, The King *v.* - - - - - - - - - - - - - 104
Loyd *v.* Allen, *re* Tinkler - - - - - - - - - - - 227
Lush, Sharp *v.* - - - - - - - - - - - - - - 221
Lyall *v.* Lyall (1872), L. R. 15 Eq. 1; 42 L. J. Ch. 195; 27 L. T. 530 435, 439
Lyde, Wilkinson *v.*, *re* Laidlaw - - - - - - - - 225, 352
Lyell, Inland Revenue *v.* - - - - - - - - - 239, 240, 252
Lysaght, Commissioners of Inland Revenue *v.* - - - - - - - - 237

Macalister, Lord Advocate *v.* - - - - - - - 415, 444, 499
Macculloch *v.* Atkinson, [1904] A. C. 55- - - - - - - - 446
Macdonald's Trustees *v.* Aberdeen Corporation (1902), 4 Fra. 907; 39 S. L. R. 745; 10 S. L. T. 177 - - - - - - - - - 352
Macfarlane *v.* Lord Advocate, [1894] A. C. 291; 6 R. 287 - - - 326
Mackay, *re*, Griessemann *v.* Carr, [1911] 1 Ch. 300; 80 L. J. Ch. 237; 103 L. T. 755 - - - - - - - - - - - - 375
MacKechnie, Petitioner (1898), 6 S. L. T. 242 - - - - - - - 97
Mackenzie's Trustees, Lord Advocate *v.* - - - - - - - - 245
Maclachlan, Inland Revenue *v.* - - - - - - - - - 26, 177
Macrae Lord Advocate *v.* (*see* Lord Advocate *v.* Murray) - - - - 338
Maddock, *re*, Llewellyn *v.* Washington, [1902] 2 Ch. 220; 71 L. J. Ch. 567; 86 L. T. 644 - - - - - - - - - - - 335
Magan, *re* (1908), 52nd Inland Revenue Report, page 87, and see *in re* Dunbar-Buller, [1922] 2 I. R. 204 - - - - - - - - 125
Malkin, Attorney-General *v.* - - - - - - - - - - - 336
M'Alpine's Trustees (1883), 10 Rett. 837; 20 S. L. R. 551 - - - 353
Manchester, *re*, Duncannon *v.* Manchester, [1912] 1 Ch. 540; 81 L. J. Ch. 329; 106 L. T. 332 - - - - - - - - - - 166

PAGE

Mander, Attorney-General *v.* - - - - - - - - - 430, 503
Mansion, Bryan *v.* - - - - - - - - - - - 372, 377
Margarison *v.* Waller, *re* Waller - - - - - - - - - 215
Marlborough, Shattesbury *v.* - - - - - - - - - 353
Marriott, Peareth *v.* - - - - - - - - - - 509
Marshall, Lord Advocate *v.* - - - - - - - - - - 449
Martin, Turner *v.* - - - - - - - - - - - 328
Massam, Thorley *v.*, *re* Thorley - - - - - - - - 331, 332
Massey, *re*, Ram *v.* Massey (1920), 122 L. T. 676 ; 64 S. J. 308 - - 221, 352
Mathew, Anderson's Trustees *v.* - - - - - - - - - 208
Mathieson, Ewing's Trustees *v.* - - - - - - - - - 376
Maxwell, Attorney-General *v.* - - - - - - - - - 336
McEuen, *re*, McEuen *v.* Phelps, [1913] 2 Ch. 704 ; 83 L. J. Ch. 66 ; 109 L. T. 701 - - - - - - - - - - - 215, 349
McKechnie *v.* Clark, *re* Clark - - - - - - - - - 103, 108
McKersies, Lord Advocate *v.* - - - - - - - - - 433, 536
M'Connel's Trustees *v.* Inland Revenue Commissioners, [1927] S. L. T. 14 - 135
M'Cracken, Duncan's Trustees *v.* - - - - - - - - - 438
McTaggart Stewart, H. M. Advocate *v.* - - - - - - - - 41
Mead, *re*, Austin *v.* Mead (1880), 15 Ch. D. 651 ; 50 L. J. Ch. 30 - - 33
Meadows, Dugdale *v.* - - - - - - - - - - - 505
Menzies, Bartholomew *v.*, *re* Weston - - - - - - - - 33
Menzies, Petitioner (1903), 10 S. L. T. 636 - - - - - 97, 98
Metcalfe, Attorney-General *v.* - - - - - - - - - 344
Mexborough *v.* Savile (1903), 88 L. T. 131 ; 19 T. L. R. 287 - - - 222
Meyrick, *re*, Meyrick *v.* Hargreaves, [1897] 1 Ch. 99 ; 66 L. J. Ch. 33 ; 75 L. T. 621 - - - - - - - - - - 219, 222
Michie's Executors *v.* Michie (1905), 7 Fra. 509 ; 42 S. L. R. 386 ; 12 S. L. T. 738 - - - - - - - - - - - 221
Micholls *v.* Samuel, *re* Beddington - - - - - - - - - 210
Miller *v.* Miller (1735), 3 P. Wms. 357 - - - - - - - - 33
Miller's Trustees, Lord Advocate *v.* - - - - - - - - - 354
Mitchell, Attorney-General *v.* - - - - - - - - - 425, 427
Mitchell, *in re*, *ex parte* Cunningham (1884), 13 Q. B. D. 418 ; 53 L. J. Ch. 1067 ; 51 L. T. 447 - - - - - - - - - - 389
Monro, Eyre *v.* - - - - - - - - - - - - 330
Montagu, Attorney-General *v.* - - - - - - - - - - 153
Montefiore, Attorney-General *v.* (1888) - - - - - - - - 421
Montefiore, Attorney-General *v.* (1909) - - - - - - 185, 378, 497
Montgomery, Thomas *v.* - - - - - - - - - - 344, 346
Montgomery's Trustees, Inland Revenue *v.* - - - - - - - - 252
Moore *v.* Moore (1874), L. R. 18 Eq. 474 ; 43 L. J. Ch. 617 ; 30 L. T. 752 - 33
Moray (Countess), Lord Advocate *v.* - - - - - - - - 9, 99, 231
Moray (Earl), Lord Advocate *v.* (1917) - - - - - - - - 95
Moray (Earl), Lord Advocate *v.* (1919) - - - - - - - 96, 271
Morland, Fryer *v.* - - - - - - - - - - - 412, 517
Morris, *re*, [1927] W. N. 146 ; 71 S. J. 472 - - - - - - - - - 187
Morris *v.* Morris's Trustees (1904), 11 S. L. T. 793 ; 12 S. L. T. 612 - - 197
Morris, Scott *v.*, *re* Scull - - - - - - - - - - 187, 207
Morris *v.* Woore, *re* Boxer - - - - - - - - - - - 221
Morrison, *re*, Morrison *v.* Morrison (1910), 102 L. T. 530 ; 26 T. L. R. 395, 225, 355
Mountbatten, Public Trustee *v.*, *re* Cassel - - - - - - - 29, 217
Murray, Attorney-General *v.* - - - - - - - - - 87, 88, 89
Murray (Freckleton's Judicial Factor), Lord Advocate *v.* - - - - - 338

PAGE

National Provincial Bank, Attorney-General *v.* - - - - - - 105
Naylor, Williamson *v.* - - - - - - - - - - - - - 328
Neal *v.* Jolley, *re* Jolley - - - - - - - - - - - - 208
Nesfield, *in re*, Barber *v.* Cooper, [1914] W. N. 161; 110 L. T. 970 - 223, 508
Nevill, Abergavenny *v.*, *re* Abergavenny S. E. - - - - - - 124, 220
Nevill *v.* Inland Revenue Commissioners, [1924] A. C. 385; 93 L. J. K. B. 321; 130 L. T. 802 - - - - - - - - - - 23, 94, 124
Nevinson *v.* United Kingdom Temperance &c. Institution, *re* Grant - 221, 223
New Afrikander Gold Mining Co., Booth *v.* - - - - - - - - 53
New York Breweries Company *v.* Attorney-General, [1899] A. C. 62; 68 L. J. Q. B. 135; 79 L. T. 568 - - - - - - - - 165, 282
New York Life Insurance Company *v.* Public Trustee, [1924] 2 Ch. 101; 93 L. J. Ch. 449; 131 L. T. 438 - - - - - - - - - 104
Nisbett's Trustees *v.* Learmonth (1845), 8 Dunl. 69 - - - - - 344, 372
Northcliffe, *re*, Arnholz *v.* Hudson, [1929] 1 Ch. 327; 98 L. J. Ch. 65; 140 L. T. 300 - - - - - - - - - - - 14, 29, 365
Northumberland *v.* Attorney-General, [1905] A. C. 406; 74 L. J. K. B. 734; 93 L. T. 88 - 113, 415, 455, 473, 476, 480, 483, 487, 499, 502, 503

Oakeshott *v.* Hawkins, *re* Acklom - - - - - - - - - - 31
O'Grady *v.* Wilmot, [1916] 2 A. C. 231; 85 L. J. Ch. 386; 114 L. T. 1097 188, 207, 367
O'Hanlon *v.* Logue, [1906] 1 I. R. 247 - - - - - - - - - - 390
Oldfield *v.* Preston (1862), 3 De G. F. & J. 398; 31 L. J. Ch. 256; 5 L. T. 650 413
Orford, *re*, Cartwright *v.* Del Balzo, [1896] 1 Ch. 257; 65 L. J. Ch. 253; 73 L. T. 681 - - - - - - - - - - - - 175, 213
Orr-Ewing, Petitioner, [1920] 1 S. L. T. 259 - - - - - - - - 98
Osborne, Hoare *v.* - - - - - - - - - - - - - 348
Oswald, Advocate-General *v.* - - - - - - - - - - - - 345

Palmer, *re*, Leventhorpe *v.* Palmer (1912), 106 L. T. 319 - - - - - 223
Palmer, *re*, Palmer *v.* Palmer, [1916] 2 Ch. 391; 85 L. J. Ch. 577; 115 L. T. 57 - - - - - - - - - - - - 214, 225
Palmer, *re*, Palmer *v.* Rose-Innes [1900] W. N. 9; 35 L. J. N. C. 48 - 187, 188
Parker *v.* Pullen, *re* Pullen - - - - - - - - - - - - 203
Parker, *re*, White *v.* Stewart, [1917] W. N. 233; 86 L. J. Ch. 766; 117 L. T. 422 - - - - - - - - - - - - - 227
Parker-Jervis, *re*, Salt *v.* Locker, [1898] 2 Ch. 643; 67 L. J. Ch. 682; 79 L. T. 403 - - - - - - - - - - - - 216, 224
Parr *v.* Attorney-General, [1926] A. C. 239; 95 L. J. K. B. 417; 134 L. T. 321 131
Parrott, Treasury Solicitor *v.*, *re* Lee - - - - - - - - - 33
Partington *v.* Attorney-General (1869), L. R. 4 E. & I. App. 100; 38 L. J. Ex. 205; 21 L. T. 370 - - - - - - - - - - - 18
Pascoe, Fowkes, *v.* - - - - - - - - - - - - - 79
Payne, Bate *v.* - - - - - - - - - - - - - - 374
Payne *v.* Grey, *re* Stamford & Warrington - - - - - - - - 214
Payne *v.* The King, [1902] A. C. 552; 71 L. J. P. C. 128; 87 L. T. 84 - 104
Pearetn *v.* Marriott (1861), 22 Ch. D. 182; 52 L. J. Ch. 221; 46 L. J. 800 - 509
Pearson, Attorney-General *v.* - - - - - - - - - - 83, 124
Peek, Attorney-General *v.* - - - - - - - - - - 266, 516
Pennell *v.* Franklin, *re* White - - - - - - - - - - 332
Penrhyn, Attorney-General *v.* - - - - - - - - - 24, 252
Peters, Louch *v.* - - - - - - - - - - - - - 351

PAGE

Peyton, *re* (1861), 7 H. & N. 265 ; 31 L. J. Ex. 50 ; 5 L. T. 313 - - 430, 467
Phelps, McEuen *v.*, re McEuen - - - - - - - - - 215, 349
Philbrick's Settlement, *re* (1865), 34 L. J. Ch. 368 ; 12 L. T. 261 - 337, 367
Pickard *v.* Attorney-General (1840), 6 M. & W. 348 ; 9 L. J. Ex. 329 - - 333
Pimm, *re*, Sharpe *v.* Hodgson, [1904] 2 Ch. 345 ; 73 L. J. 627 ; 91 L. T. 190 221
Pinsent *v.* Avery, *re* Avery - - - - - - - - - - 206
Pleace *v.* Booth, *re* Booth - - - - - - - - - 271, 309
Poë, Spencer Cooper *v.*, *re* Spencer Cooper - - - 175, 207, 212, 221
Poncia, Taylor *v.* - - - - - - - - - 163, 176, 376
Pooley, *re* (1888), 40 Ch. D. 1 ; 58 L. J. Ch. 1 ; 60 L. T. 73 - - - 332
Porter *v.* Bowerman, *re* Bowerman - - - - - - - - 208
Portman (No. 2), *re*, [1925] Ch. 294 ; 94 L. J. Ch. 329 ; 133 L. T. 389 - 211
Portman, *re*, Portman *v.* Portman, [1924] 2 Ch. 6 ; 93 L. J. Ch. 362 ; 132 L. T. 440 - - - - - - - - - - - 217
Poulett *v.* Hood (1866), 35 Beav. 234, 241 ; 13 L. T. 783 - - - 222, 509
Power, Attorney-General for Ireland *v.* - - - - - - - 17, 254
Prance, Sheppard *v.*, *re* Trinder - - - - - - - - - 353
Preston, Oldfield *v.* - - - - - - - - - - - - 413
Priestley, Inland Revenue Commissioners *v.* - - - 147, 245, 249, 271
Pringle, Lord Advocate *v.* - - - - - - - - - - 296
Public Trustee, Allen *v.*, *re* Wedgwood - - - - - - 225, 351
Public Trustee, Attorney-General *v.* - - - - - - - - 420
Public Trustee, Attorney-General *v.*, *re* Tuck - - - - - - 6
Public Trustee, Forbes *v.*, *re* Tollemache - - - - - - - 210
Public Trustee *v.* Hoare, *re* Hicklin - - - - - - - 212, 213
Public Trustee, Kinloch Cooke *v.*, *re* Coxwell - - - - - - 222
Public Trustee *v.* Lambert, *re* Lambert - - - - - - - 8
Public Trustee *v.* Mountbatten, *re* Cassel - - - - - - 29, 217
Public Trustee, New York Life Insurance Company *v.* - - - - 104
Public Trustee *v.* Sarson, *re* Sarson - - - - - - - 226, 351
Public Trustee *v.* Tattersall, *re* Tattersall - - - - - 154, 214
Public Trustee *v.* Victoria Hospital for Children, *re* Lomer - - - - 224
Pullen, *re*, Parker *v.* Pullen, [1910] 1 Ch. 564 ; 79 L. J. Ch. 303 ; 102 L. T. 453 - - - - - - - - - - - - 203
Putnam, Bliss *v.* - - - - - - - - - - - - 373

Queen, The, Blackwood *v.* - - - - - - - - - - - 324
Queen, The, *v.* Commissioners of Stamps and Taxes (1844), 6 Q. B. 657 - 337
Queen, The, De Lancey *v.* - - - - - - - - - - - 327
Queen, The, Stern *v.* - - - - - - - - - - - - 107
Quixley, Attorney-General *v.* - - - - - - - - - - 263

R. *v.* Ferrybridge (1823), 1 B. & C. 375 ; 2 D. & R. 634 - - - - 148
Ram *v.* Massey, *re* Massey - - - - - - - - - 221, 352
Rathdonnell, Attorney-General for Ireland *v.* - - - - - - - 413
Rayer, *re*, Rayer *v.* Rayer, [1903] 1 Ch. 685 ; 72 L. J. Ch. 230 ; 87 L. T. 712 - - - - - - - - - - - - 224, 510
Reid's Trustees, Lord Advocate *v.* - - - - - - - - - 294
Repington, *re*, Wodehouse *v.* Scobell, [1904] 1 Ch. 811 ; 73 L. J. Ch. 533 ; 90 L. T. 663 - - - - - - - - - - - - 373
Reversionary Interest Society, *re*, Attorney-General *v.* Walker, *The Times*, 14th May, 1896 - - - - - - - - - - 242, 251

PAGE

Rhodes, Bowra *v.* - - - - - - - - - - - 360, 374, 377
Riall, Attorney-General for Ireland *v.* - - - - - - - - 420
Richardson *v.* Bantoft, *re* Briggs - - - - - - - - 222, 509
Richardson *v.* Inland Revenue Commissioners, [1909] 2 I. R. 597 - - 87
Richmond (No. 2), Attorney-General *v.* - - - - - - - - 10
Richmond & Gordon, Attorney-General *v.* - - - - - - - 96, 150
Ring *v.* Jarman (1872), L. R. 14 Eq. 357 ; 41 L. J. Ch. 535 ; 26 L. T. 690 - 418
Robert's Trustees, Lord Advocate *v.* - - - - - - - - - 421
Robertson, Petitioner, [1914] 1 S. L. T. 492 - - - - - - - 216
Robertson, Attorney-General *v.* - - - - - - - - - 485
Robertson (or Fleming), Lord Advocate *v.* - - - - - - 85, 86, 420
Robinson, Attorney-General for Ireland *v.* - - - - - - - 87, 88
Robinson, Crow *v.* - - - - - - - - - - - 360
Rose-Innes, Palmer *v.*, *re* Palmer - - - - - - - - 187, 188
Ross *v.* Ross's Trustees (1901), 9 S. L. T. 340 - - - - - - 211
Routledge's Trustees, H. M. Advocate *v.* - - - - - - - - 334
Rowley, Barnes *v.* - - - - - - - - - - - 358
Royal National Lifeboat Institution, Turnbull *v.*, *re* Brown - - - 225
Royal Trust Co. *v.* Attorney-General for Alberta, [1930] A. C. 144 ; 99 L. J. P. C. 43 ; 142 L. T. 121 - - - - - - - - - - 105
Royds *v.* Briscoe, *re* Briscoe - - - - - - - - - 221
Rudge, Attorney-General *v.* - - - - - - - - - 350, 383
Rushton, Attorney-General *v.* - - - - - - - - - - 478
Ruxton, Ford *v.* - - - - - - - - - - - - 351

Salt *v.* Locker, *re* Parker-Jervis - - - - - - - - - 216, 224
Salting, Commissioner of Stamp Duties *v.* - - - - - - - - 106
Salvation Army Assurance Society, Goldstein *v.* - - - - - - - 305
Salvesen's Trustees *v.* Commissioners of Inland Revenue, [1930] S. L. T. 387 - - - - - - - - - - - - - 138
Sammon, *re* (1838), 3 M. & W. 381 - - - - - - - - - 367
Samuel, Micholls *v.*, *re* Beddington - - - - - - - - - 210
Samuel *v.* Swaythling, *re* Swaythling - - - - - - - - - 206
Sanders *v.* Kiddell (1835), 7 Sim. 536 ; 5 L. J. Ch. 29 - - - - - 352
Sandwich, Attorney-General *v.* - - - - - - - - - - 239
Santley *v.* Wilde, [1899] 2 Ch. 474 ; 68 L. J. Ch. 681 ; 81 L. T. 393 - - 105
Sarson, *re*, Public Trustee *v.* Sarson, [1925] Ch. 31 ; 94 L. J. Ch. 155 ; 132 L. T. 339 - - - - - - - - - - - 226, 351
Saunders, *re*, Saunders *v.* Gore, [1898] 1 Ch. 17 ; 67 L. J. Ch. 55 ; 77 L. T. 450 - - - - - - - - - - - - - 508
Savile, Mexborough *v.* - - - - - - - - - - - 222
Scobell, Wodehouse *v.*, *re* Repington - - - - - - - - - 373
Scott, *re*, [1901] 1 K. B. 228 ; 70 L. J. K. B. 66 ; 83 L. T. 613 - - 12, 329
Scott *v.* Morris, *re* Scull - - - - - - - - - - 187, 207
Scott, *re*, Scott *v.* Scott, [1915] 1 Ch. 592 ; 84 L. J. Ch. 366 ; 112 L. T. 1057 - 352
Scott, *re*, Scott *v.* Scott, [1916] 2 Ch. 268 ; 85 L. J. Ch. 528 ; 114 L. T. 1114 - - - - - - - - - - - - 205, 371
Scott's Trustees, Inland Revenue *v.* - - - - - - - - - 30, 88
Scull, *re*, Scott *v.* Morris (1917), 87 L. J. Ch. 59 ; 118 L. T. 7 ; [1917] W. N. 309 - - - - - - - - - - - 187, 207
Seafield, Fischer *v.* - - - - - - - - - - - - 338
Seale, Farwell *v.* - - - - - - - - - - - - 373

PAGE

Sealey, *re*, Tomkins *v.* Tucker (1901), 85 L. T. 451 - - - - - - 352
Seccombe, Attorney-General *v.* - - - - - - - - - - - - 41
Sefton, Attorney-General *v.* - - - - - - - - - - - - 461
Selborne, Attorney-General *v.* - - - - - - - - - - - 416, 484
Shaftesbury *v.* Marlborough (1835), 7 Sim. 237 ; 40 R. R. 129 - - - 353
Sharman, *re*, Wright *v.* Sharman, [1901] 2 Ch. 280 ; 70 L. J. Ch. 671 ; 84 L. T. 859 - - - - - - - - - - - - - 207
Sharp *v.* Lush (1879), 10 Ch. D. 468 ; 48 L. J. Ch. 231 - - - - - 221
Sharpe, Attorney-General *v.* - - - - - - - - - - - - 330
Sharpe *v.* Hodgson, *re* Pimm - - - - - - - - - - - - 221
Shaw *v.* Turbett (1862), 14 Ir. Ch. 476 - - - - - - - - - 375
Shaw's Trustees *v.* Greenock Medical Aid Society, [1930] S. L. T. 39 - 336
Sheppard *v.* Prance, *re* Trinder - - - - - - - - - - - 353
Sherwell *v.* Combined Incandescent Mantles Syndicate, [1907] W. N. 110 ; 23 T. L. R. 482 ; 51 S. J. 446 - - - - - - - - - - 53
Sibthorp, Attorney-General *v.* - - - - - - - - - - 412, 472
Sidgwick, Lord Advocate *v.* - - - - - - - - - - - 148, 413
Sitwell, *ex parte*, *in re* Drury Lowe's Marriage Settlement (1888), 21 Q. B. D. 466 ; 59 L. T. 539 - - - - - - - - - - - 484
Skipper *v.* Wade, *re* Turnbull - - - - - - - - - - 354, 385
Skottowe *v.* Young (1871), L. R. 11 Eq. 474 ; 40 L. J. Ch. 366 ; 24 L. T. 220 - - - - - - - - - - - - - - 343
Sleigh *v.* Glasgow & Transvaal Options (1904), 6 Fra. 242 - - - - 53
Smith, Attorney-General *v.* - - - - - - - - - - - - 20
Smith, Brassard *v.* - - - - - - - - - - - - - 108
Smith, Brown *v.* - - - - - - - - - - - - 375. 489
Smith, Finch *v.*, *re* Ainsworth - - - - - - - - - - - 374
Smith, Wace *v.*, *re* Brown - - - - - - - - - - - - 333
Smith's Trusts, *re* (1864), 10 L. T. 598 ; 12 W. R. 933 - - - - - 439
Smith-Marriott, Attorney-General *v.* - - - - - - 162, 239, 240
Smyth, Attorney-General for Ireland *v.* - - - - - - - - - - 36
Smyth, *re*, Edwards *v.* Smyth, [1918] 1 Ch. 118 ; 87 L. J. Ch. 40 ; 117 L. T. 793 - - - - - - - - - - - - - 211
Smythe, Attorney-General *v.* - - - - - - - - - - 412, 479
Snellgrove *v.* Bailey (1744), 3 Atk. 214 - - - - - - - - - - 33
Solicitor-General *v.* Law Reversionary Interest Society (1873), L. R. 8 Ex. 233 ; 42 L. J. Ex. 146 ; 28 L. T. 769 - - - - 455, 473, 482, 502
Somerville, Londesborough *v.* - - - - - - - - - - - 353
Southwick & Oundle, Westmorland, *v.* - - - - - - - - - - 147
Special Commissioners, Barnardo's Homes *v.* - - - - - - 106, 347
Spencer *v.* Turner, *re* Hudson - - - - - - - - - 34, 188, 207
Spencer Cooper, *re*, Poë *v.* Spencer Cooper, [1908] 1 Ch. 130 ; 77 L. J. Ch. 64 ; 98 L. T. 344 - - - - - - - - 175, 207, 212, 213, 221
Sprot's Trustees *v.* Lord Advocate (1902), 10 S. L. T. 452 - - - - - 161
Stamford & Warrington, *re*, Payne *v.* Grey, [1910] 2 Ch. 83 ; 79 L. J. Ch. 435 ; 102 L. T. 802 - - - - - - - - - - - - 214
Staniland *v.* Willott (1752), 3 Mac. & G. 664 - - - - - - - - 34
Steel, Warner to, *re* Warner's Settled Estates - - - - - - - - 505
Steinkopff, *re*, Favorke *v.* Steinkopff, [1922] 1 Ch. 174 ; 91 L. J. Ch. 165 ; 126 L. T. 597 - - - - - - - - - - - - - 106
Stephens, Bulkeley *v.* - - - - - - - - - - - - - 303
Stern *v.* The Queen, [1896] 1 Q. B. 211 ; 65 L. J. Q. B. 240 ; 73 L. T. 752 107
Steven, Forbes *v.* - - - - - - - - - - - - 106, 327

PAGE

Stewart, Lord Advocate *v.* - - - - - - - - - - - 99
Stewart, Thynne *v. re*, Bath - - - - - - - - - - 222
Stewart, White *v.*, *re* Parker - - - - - - - - - - 227
Stewart's Trustees, Lord Advocate *v.* - - - - - - - - - 13
Stoddart, *re*, Bird *v.* Grainger, [1916] 2 Ch. 444 ; 86 L. J. Ch. 29 ; 115 L. T. 540 - - - - - - - - - - - - - - 226
Stokes, *re*, Stokes *v.* Ducroz (1890), 62 L. T. 176 ; 38 W. R. 535 - 106, 327
Stracey's Case, The Queen *v.* Commissioners of Stamps & Taxes (1844), 6 Q. B. 657 - - - - - - - - - - - - 337
Strange, Attorney-General *v.* - - - - - - - - - - - 250
Strathcona *v.* Inland Revenue Commissioners, [1929] S. C. 800 ; [1929] S. L. T. 629 - - - - - - - - - - - - 35
Strathmore *v.* Vane, *re* Bowes - - - - - - - - - - 376
Strauss, Clifton *v.*, *re* Aschrott - - - - - - - - - - 139
Sudeley *v.* Attorney-General, [1897] A. C. 11 ; 66 L. J. Q. B. 21 ; 75 L. T. 398 - - - - - - - - - - - - 106, 108
Surman *v.* Fitzgerald, *re* Fitzgerald - - - - - - - - - 434
Sutherland, *re*, Chaplin *v.* Leveson-Gower, [1922] 2 Ch. 782 ; 92 L. J. Ch. 113 ; 128 L. T. 246 - - - - - - - - - 272, 308
Sutton *v.* Featherley, *re* Swinburne - - - - - - - - - 33
Swaythling, *re*, Samuel *v.* Swaythling (1912), 29 T. L. R. 88 ; 57 Sol. J. 173 206
Sweeting *v.* Sweeting (1853), 1 Drew. 331 ; 22 L. J. Ch. 441 ; 20 L. T. 288 331, 333
Swinburne, *re*, Sutton *v.* Featherley, [1926] Ch. 38 ; 95 L. J. Ch. 104 ; 134 L. T. 121 - - - - - - - - - - - - 33

Tatham, Dawkins *v.* - - - - - - - - - - - - - 351
Tattersall, *re*, Public Trustee *v.* Tattersall, [1918] 2 Ch. 243 ; 119 L. T. 70 ; 62 S. J. 605 - - - - - - - - - - - 154, 214
Taylor (Miller's Trustees), Lord Advocate *v.* - - - - - - - 354
Taylor *v.* Poncia, [1901] W. N. 87 ; 49 W.R. 596 - - - 163, 176, 376
Tew *v.* Briggs, *re* Charlesworth - - - - - - - - - 209
Thomas *v.* Montgomery (1827), 3 Russ. 502 - - - - - 344, 346
Thomson *v.* Advocate-General (1845), 12 Cl. & F. 1 ; 13 Sim. 153 111, 338, 387
Thorley, *re*, Thorley *v.* Massam, [1891] 2 Ch. 613 ; 60 L. J. Ch. 537 ; 64 L. T. 515 - - - - - - - - - - - 331, 332
Thynne, Attorney-General *v.* - - - - - - - - - - 131
Thynne *v.* Stewart, *re* Bath - - - - - - - - - - 222
Tibbetts *v.* Engelbach, *re* Engelbach - - - - - - - - 84
Tichurst's Settlement, *re*, Wyatt *v.* Tichurst, [1930] W. N. 166 - 229, 321
Tindall, Bayley *v.* - - - - - - - - - - - - 376, 489
Tinkler, *re*, Loyd *v.* Allen, [1917] 1 Ch. 242 ; 86 L. J. Ch. 177 ; 115 L. T. 710 - - - - - - - - - - - - - 227
Tollemache, *re*, Forbes *v.* Public Trustee, [1930] W. N. 138 ; 69 L. J. N. C. 423 210
Tomkins *v.* Tucker, *re* Sealey - - - - - - - - - - 352
Toronto General Trusts Corporation *v.* The King, [1919] A. C. 679 ; 88 L. J. P. C. 115 - - - - - - - - - - - - 103
Torrington, *re*, [1913] 2 Ch. 623 ; 83 L. J. Ch. 8 ; 109 L. T. 541 - - 249
Townsend, *re*, [1901] 2 K. B. 331 ; 70 L.J. K. B. 764 ; 84 L. T. 714 - 15, 31, 154
Treasury Solicitor *v.* Parrott, *re* Lee - - - - - - - - 33
Trewby, Cooper *v.* - - - - - - - - - - - - 502
Trinder, *re*, Sheppard *v.* Prance (1911), 56 S. J. 74 - - - - - 353
Tuck, *re*, Attorney-General *v.* Public Trustee, [1929] 2 K. B. 77 ; 98 L. J. K. B. 462 ; 141 L. T. 398 - - - - - - - - - 6
Tucker, Tomkins *v.*, *re* Sealey - - - - - - - - - - 352

PAGE

Turbett, Shaw *v.* - - - - - - - - - - - - - 375
Turnbull, Petitioner, [1910] 2 S. L. T. 328 - - - - - - - 98
Turnbull *v.* Royal National Lifeboat Institution, *re* Brown - - - 225
Turnbull, *re*, Skipper *v.* Wade, [1905] 1 Ch. 726 ; 74 L. J. Ch. 438 - 354, 385
Turnbull *v.* Turnbull, [1910] S. C. 766 ; 47 S. L. R. 668 - - - 98, 232
Turnell, Day *v.*, *re* Higgins - - - - - - - - - - - 508
Turner *v.* Martin (1857), 7 De G. M. & G. 429 ; 26 L. J. Ch. 216 ; 28 L. T. 349 - - - - - - - - - - - - - 328
Turner, Spencer *v.*, *re* Hudson - - - - - - - - - 34, 188, 207

Udny *v.* Udny (1869), L. R. 1 Sc. & D. App. 441 - - - - - - 388
Union of London & Smith's Bank *v.* Wasserberg, *re* Wasserberg - - - 34
United Kingdom Temperance &c. Institution, Nevinson, *v.*, *re* Grant - 221, 223
Upton, Attorney-General *v.* - - - - - - - - - 422, 424, 426
Urquhart's Trustees *v.* Urquhart (1900), 3 Fra. 242 ; 38 S. L. R. 148 - - 353

Vane, Strathmore *v.*, *re* Bowes - - - - - - - - - - 376
Van Grutten *v.* Digby (1862), 31 Beav. 561 ; 32 L. J. Ch. 179 ; 7 L. T. 455 - 434
Vardill, Birtwhistle *v.* - - - - - - - - - - - - 443
Varley, Warbrick *v.* - - - - - - - - - - - - - 354
Veal *v.* Veal (1859), 27 Beav. 303 ; 2 L. T. 228 - - - - - - 33
Vernon, *re*, [1901] 1 K. B. 297 ; 70 L. J. K. B. 202 ; 83 L. T. 535 - - 242
Vertue *v.* Doyly, *re* Doyly - - - - - - - - - - 225
Victoria Hospital for Children, Public Trustee *v.*, *re* Lomer - - - 224

Wace *v.* Smith, *re* Brown - - - - - - - - - - 333
Wack, Attorney-General *v.* - - - - - - - - - - 191
Wade, Attorney-General v. - - - - - - - - - - 364
Wade, Skipper *v.*, *re* Turnbull - - - - - - - - - 354, 385
Walker, Attorney-General, *v.*, *re* Reversionary Interest Society - - 242, 251
Wallace *v.* Attorney-General (1865), L. R. 1 Ch. App. 1 ; 35 L. J. Ch. 124 ; 13 L. T. 480 - - - - - - - - - - - 433, 434, 439
Waller, *re*, Margarison *v.* Waller, [1916] 1 Ch. 153 ; 85 L. J. Ch. 188 ; 114 L. T. 42 - - - - - - - - - - - - - 215
Wallop's Trust, *re* (1864), 1 De G. J. & S. 656 ; 33 L. J. Ch. 351 ; 10 L. T. 174 - - - - - - - - - - - - 10, 111, 427, 437
Warbrick *v.* Varley (No. 1) (1861), 30 Beav. 241 - - - - - - - 354
Ward, *re*, Harrison *v.* Ward, [1922] 1 Ch. 517 ; 91 L. J. Ch. 332 ; 126 L. T. 628 - - - - - - - - - - - - - 151
Warland, Castle *v.* - - - - - - - - - - - - - 375
Warner's Settled Estates, *re*, Warner to Steel (1881) 17 Ch. D. 711 ; 50 L. J. Ch. 542 ; 45 L. T. 37 - - - - - - - - - - 505
Warren's Trustees *v.* Lord Advocate, [1928] S. C. 806 ; [1928] S. L. T. 522 - 280
Warrender's Trustees, H. M. Advocate *v.* - - - - - - - - 150
Washington, Llewellyn *v.*, *re* Maddock - - - - - - - - 335
Wasserberg, *re*, Union of London & Smith's Bank *v.* Wasserberg, [1915] 1 Ch. 195 ; 84 L. J. Ch. 214 ; 112 L. T. 242 - - - - - - 34
Watherston's Trustees, Lord Advocate *v.* - - - - - - - - 338
Watson, Attorney-General *v.* - - - - - - - - - 26, 255
Webber, *re*, Gribble *v.* Webber, [1896] 1 Ch. 914 ; 65 L. J. Ch. 544 ; 74 L. T. 244 - - - - - - - - - - - 203, 212
Wedgwood, *re*, Allen *v.* Public Trustee, [1921] 1 Ch. 601 ; 90 L. J. Ch. 322 ; 125 L. T. 146 - - - - - - - - - - - 225, 351

PAGE

Weir & Pitts Contract, *re* (1911), 55 S. J. 536 - - - - - - - 37
Welby-Dawson *v.* Inland Revenue Commissioners (1921), 97 *Estates Gazette* 183 - - - - - - - - - - - - - 300
Wellesley, Cowley *v.* - - - - - - - - - - - - 489
Westmorland *v.* Southwick & Oundle (1877), 36 L. T. 108 - - - - 147
Weston, *re*, Bartholomew *v.* Menzies, [1902] 1 Ch. 680; 71 L. J. Ch. 343; 86 L. T. 551 - - - - - - - - - - - - 33
Weston & Thomas's Contract, *re*, [1907] 1 Ch. 244; 76 L. J. Ch. 179; 96 L. T. 324 - - - - - - - - - - - - 504
Wheeler, *re*, Jameson *v.* Cotter, [1928] W. N. 225; 141 L. T. 322 - - - 205
White *v.* Lake (1868), L. R. 6 Eq. 188 - - - - - - - - 509
White, *re*, Pennell *v.* Franklin, [1898] 2 Ch. 217; 67 L. J. Ch. 502; 78 L. T. 770 - - - - - - - - - - - - 332
White *v.* Stewart, *re* Parker - - - - - - - - - - - 227
Whittell, Allhusen *v.* - - - - - - - - - - - 215, 349
Wilde, Santley *v.* - - - - - - - - - - - - - 105
Wilkinson *v.* Ferniehough, *re* Howe - - - - - - - - - - 352
Wilkinson *v.* Lyde, *re* Laidlaw - - - - - - - - - 225, 352
Williams *v.* Hughes (1857), 24 Beav. 474, 482; 27 L. J. Ch. 218; 30 L. T. 215 - - - - - - - - - - - - - 353
Williamson *v.* Naylor (1838), 3 Y. & C. Ex. 208 - - - - - - 328
Willott, Staniland *v.* - - - - - - - - - - - - - 34
Wills, *re*, Wills *v.* Hamilton, [1915] 1 Ch. 769; 84 L. J. Ch. 580; 113 L. T. 138 - - - - - - - - - - - - 215, 349
Wilmot, O'Grady *v.* - - - - - - - - - - 188, 207, 367
Wilson, Drake *v.*, *re* Drake - - - - - - - - - - 214, 224
Wilson, *re*, Wilson *v.* Clark, [1916] 1 Ch. 220; 85 L. J. Ch. 254; 114 L. T. 390 - - - - - - - - - - - - - 209
Winans *v.* Attorney-General, [1904] A. C. 287; 73 L. J. K. B. 613; 90 L. T. 721 - - - - - - - - - - - - - - 388
Winans *v.* Attorney-General, [1910] A. C. 27; 79 L. J. K. B. 156; 101 L. T. 754 - - - - - - - - - - - - - 107
Witt, Amiss *v.* - - - - - - - - - - - - - - 33
Witts, Davies *v.*, *re* Hole - - - - - - - - - - - 208
Wodehouse *v.* Scobell, *re* Repington - - - - - - - - - 373
Wolferstan, Jervis *v.* - - - - - - - - - - - - 330
Wolverton *v.* Attorney-General, [1898] A. C. 535; 67 L. J. Q. B. 829; 79 L. T. 58 - - - - - - - - - - 477, 479, 483, 498
Wood, Attorney-General *v.* - - - - - - - - - - 253, 255
Wood's Trustees, Lord Advocate *v.* - - - - - - - - - - 134
Woolley *v.* Beecham, *re* Beecham - - - - - - - - - 226
Woore, Morris *v.*, *re* Boxer - - - - - - - - - - 221
Worrall, Attorney-General *v.* - - - - - - - - - - 42, 43
Wotherspoon's Trustees, Lord Advocate *v.* - - - - - - 345, 364
Wreford-Brown, Attorney-General *v.*, *re* Bateman - - - - 240, 412
Wright *v.* Barnewell (1849), 19 L. J. Ch. 38; 13 Jur. 1041 - - - - 369
Wright *v.* Sharman, *re* Sharman - - - - - - - - - 207
Wyatt *v.* Ticehurst, *re* Ticehurst's Settlements - - - - - 229, 321
Wyndham *v.* Leconfield, *re* Leconfield - - - - - - 205, 509
Wynter, Bullmore *v.* - - - - - - - - - - - - 342

Yelverton, Attorney-General *v.* - - - - - - - - - - - 412
Young, Chatteris *v.* - - - - - - - - - - - - - 352
Young, Shottowe *v.* - - - - - - - - - - - - - 343

TABLE OF STATUTES.

Figures in heavy type indicate the page in the Appendix where the text of the Statute is given.

		PAGE
29 Car. 2, c. 3	Statute of Frauds—	
	s. 7	79
	s. 8	79
	s. 9	79
20 Geo. 3, c. 28	1780	323
36 Geo. 3, c. 52	Legacy Duty Act, 1796	323, 391, 526, **540**
	s. 6	344–346, 367, 369, 394
	s. 8	346, 357, 358, 361, 362, 395, 464
	s. 9	359, 370
	s. 10	358, 396, 465
	s. 11	329, 364, 365, 465
	s. 12	359, 361, 458
	s. 13	359, 371, 394
	s. 14	370, 383, 384, 465, 514, 515
	s. 17	363, 371
	s. 18	333, 427
	s. 19	326, 360
	s. 20	330
	s. 21	351, 384
	s. 22	348, 363, 397
	s. 23	337, 451
	s. 24	373
	s. 25	375
	s. 26	368
	s. 27	368, 397
	s. 28	368, 395, 397
	s. 29	368, 397
	s. 30	365
	s. 32	377
	s. 34	366
	s. 35	369
	s. 37	366
	s. 41	369
39 Geo. 3, c. 73	Legacy Duty Act, 1799, s. 1	383, **551**
45 Geo. 3, c. 28	Legacy Duty Act, 1805, s. 5	488, **551**
48 Geo. 3, c. 149	Probate & Legacy Duties Act, 1808, s. 44	368, **552**
55 Geo. 3, c. 184	Stamp Act, 1815	18, **552**
	s. 2	325, 340
	s. 37	165, 281
	Schedule	325, 340, 380, 383, 515

		PAGE
11 Geo. 4 & 1 Will. 4, c. 41	Army Pensions Act, 1830	286
2 & 3 Will. 4, c. 53	Army Prize Money Act, 1832	286
3 & 4 Will. 4, c. 29	Army (Artillery, &c.) Pensions Act, 1833	286
7 Will. 4, and 1 Vict., c. 26	Wills Act, 1837, s. 33 ..... 9, 12, 329, 475, 522	
3 & 4 Vict., c. 110	Loan Societies Act, 1840, s. 11	287
5 & 6 Vict., c. 82	Stamp Duties (Ireland) Act, 1842, s. 38	390
8 & 9 Vict., c. 19	Lands Clauses (Scotland) Act, 1845	98
8 & 9 Vict., c. 76	Revenue Act, 1845, s. 4..11, 34, 111, 325, 327, 333, **554**	
16 & 17 Vict., c. 51	Succession Duty Act, 1853 ..113, 197, 407, 418, 444, 478, 491, 526, **554**	
	s. 1.....325, 409, 421, 488	
	s. 2..409, 410, 414, 415, 424, 426, 473, 476, 485, 487, 517	
	s. 3..... 418	
	s. 4.....422-428, 437, 486	
	s. 5..... 428	
	s. 7.....36, 412, 432	
	s. 8.....325, 411, 414, 415, 432	
	s. 10.....442, 449	
	s. 11..... 341	
	s. 12.....429, 445, 447, 471, 517	
	s. 13..... 410	
	s. 14..... 473	
	s. 15.....416, 472, 477, 479, 483, 502	
	s. 16.....449, 537	
	s. 17..... 412, 516, 517	
	s. 18.....426, 474, 512–515, 517	
	s. 19..... 325	
	s. 20.....429, 430, 451, 485	
	s. 21.....459, 462, 474, 498	
	s. 22..... 459	
	s. 23.....456, 462	
	s. 24..... 516	
	s. 25..... 431	
	s. 26..... 462	
	s. 27.....455, 537	
	s. 28..... 460	
	s. 29.....454, 458, 460, 505	
	s. 30.....458, 464	
	s. 31.....357, 458	
	s. 32.....451, 452, 458, 464, 465, 514, 515	
	s. 33..... 422	
	s. 34.....462, 467, 468	
	s. 35.....423, 467	
	s. 36.....423, 465, 467	
	s. 37.....452, 469	
	s. 38.....468, 485, 486	
	s. 39..... 469	
	s. 40.....358, 463	
	s. 41..... 469	
	s. 42.....487, 488, 498, 499, 504, 505	

		PAGE
16 & 17 Vict., c. 51	Succession Duty Act, 1853—*continued.*	
	s. 43	498
	s. 44	180, 469, 487, 488, 491, 499, 502
	s. 45	494
	s. 46	495
	s. 47	77, 495
	s. 48	495
	s. 49	495
	s. 50	495
	s. 51	500
	s. 52	504
	s. 53	375, 489
	Table I.	295, 296, 307, 356–358, 363, 405, 408, 433, 452, 459, 461, 526
	Table II.	296, 307, 356, 357, 363, 405, 408, 433, 452, 459, 461, 526
	Table III	296, 307, 356, 357, 363, 405, 408, 433, 452, 459, 461, 466, 526, 536
19 & 20 Vict., c. 56	Exchequer Court (Scotland) Act, 1856	184
20 & 21 Vict., c. 44	Crown Suits (Scotland) Act, 1857	184
21 & 22 Vict., c. 56	Confirmation of Executors (Scotland) Act, 1858, s. 14	317
23 & 24 Vict., c. 80	Heritable Securities (Scotland) Act, 1860, s. 5	19
24 & 25 Vict., c. 92	Probate Duty Act, 1861	496
25 & 26 Vict., c. 22	Revenue Act, 1862, s. 5	234, **567**
	s. 39	103
27 & 28 Vict., c. 36	Army Prize (Shares of Deceased) Act, 1864	286
27 & 28 Vict., c. 56	Revenue (No. 2) Act, 1864, s. 4	107, **567**
28 & 29 Vict., c. 104	Crown Suits Act, 1865	567
	Part II.	183
	Part V.	183, 495
	s. 53	496
	s. 55	77, 282
	s. 57	165
28 & 29 Vict., c. 111	Navy and Marines (Property of Deceased) Act, 1865	234, 387
	s. 6	288
	s. 15	262
29 & 30 Vict., c. 47	Indian Prize Money Act, 1866	286
31 & 32 Vict., c. 124	Inland Revenue Act, 1868, s. 9	369, **568**
33 & 34 Vict., c. 35	Apportionment Act, 1870, s. 2	302
37 & 38 Vict., c. 42	Building Societies Act, 1874, s. 29	286
39 & 40 Vict., c. 22	Trade Union Act Amendment Act, 1876, s. 10	289
43 Vict., c. 14	Customs & Inland Revenue Act, 1880	18, **568**
	s. 11	356, 469
	s. 12	378, 501
	s. 13	381
43 & 44 Vict., c. 26	Married Women's Policies of Assurance (Scotland) Act, 1880	83
43 & 44 Vict., c. 42	Employers Liability Act, 1880	94
44 & 45 Vict., c. 12	Customs & Inland Revenue Act, 1881	18, 248, 391, **569**
	s. 32	19
	s. 37	169

		PAGE
44 & 45 Vict., c. 12	Customs & Inland Revenue Act, 1881—*continued.*	
	s. 38	78
	(2)	12, 33, 36, 40, 42, 81
	s. 41	391, 518
	s. 42	380
	s. 43	356
44 & 45 Vict., c. 21	Married Women's Property (Scotland) Act, 1881	250
45 & 46 Vict., c. 39	Conveyancing Act, 1882, s. 3	197
45 & 46 Vict., c. 51	Government Annuities Act, 1882, s. 6	287
45 & 46 Vict., c. 75	Married Women's Property Act, 1882	83, 250
46 & 47 Vict., c. 47	Provident Nominations and Small Intestacies Act, 1883—	
	s. 3	287
	s. 7	289
	s. 10	289
47 & 48 Vict., c. 44	Naval Pensions Act, 1884, s. 2	288
47 & 48 Vict., c. 55	Pensions and Yeomanry Pay Act, 1884, s. 4	286
47 & 48 Vict., c. 62	Revenue Act, 1884, s. 11	282, **571**
50 & 51 Vict., c. 40	Savings Banks Act, 1887, s. 3	289
50 & 51 Vict., c. 67	Superannuation Act, 1887, s. 8	286
51 & 52 Vict., c. 8	Customs & Inland Revenue Act, 1888	84, 323, 443, 449, 455, **571**
	s. 21	267
	(1)	442, 448, 449, 463, 520
	(2)	326, 488
	s. 22	506
	(2)	463
	(3)	463
52 & 53 Vict., c. 7	Customs & Inland Revenue Act, 1889	19, 197, 248, **573**
	s. 5	267
	s. 6	267
	s. 10 (1)	468, 486
	(2)	513
	(3)	494
	s. 11	78
	(1)	36, 39, 82, 86
	s. 12	185, 497, 505
	(1)	197, 198
	s. 13	185, 496
	s. 14	185, 378, 496
	s. 15	496, 505
52 & 53 Vict., c. 42	Revenue Act, 1889, s. 19	288
53 & 54 Vict., c. 21	Inland Revenue Regulation Act, 1890, **575**—	
	s. 21	183
54 & 55 Vict., c. 38	Stamp Duties Management Act, 1891, s. 2	177, 372, 490
55 & 56 Vict., c. 6	Colonial Probates Act, 1892	317
	s. 7	286
	s. 9	286
56 & 57 Vict., c. 5	Regimental Debts Act, 1893	234, 387
	s. 16	261, 286
56 & 57 Vict., c. 39	Industrial and Provident Societies Acts, 1893—	
	s. 25	287
	s. 27	287

PAGE

56 & 57 Vict., c. 71 — Sale of Goods Act, 1893, s. 62 57

57 & 58 Vict., c. 30 — Finance Act, 1894 ...1, 3, 76, 86, 123, 130, 166, 174, 179, 201, 205, 229, 231–234, 242, 243, 245, 248–250, 267, 268, 271, 408, 419, 449, 473, 507, 536, **576**

s. 1..1, 4, 5, 13, 24–26, 28, 94, 109, 126, 133, 323, 391, 449, 518

s. 2..... 1, 4

(1).....13, 109

(*a*) 5, 8, 40, 78, 94

(*b*).....13, 14, 23, 26, 30, 32, 49, 54, 238

(*c*) 12, 32, 36, 39, 40, 78, 81–85

(*d*).....82–85, 87, 89, 90, 93, 157, 159

s. 2 (2) 10, 11, 101, 109

(3).....35, 238

s. 3 (1).....32, 36, 45, 46, 90, 239

(2) 37, 47, 240

s. 4.....1, 67, 83, 122, 123, 130

s. 5 (1).....2, 20, 268

(2).....2, 20, 244, 391, 392, 518

(3).....10, 11, 50, 253, 255

(5) 22, 23, 27, 72, 73, 80, 124, 145, 220

s. 6 (1) 103

(2) 158, 165, 167, 169, 183, 201, 306, 318

(3) 168

(4) 158, 173

(5) 302

(7) 158, 167

(8) 158, 159, 190, 453, 534

s. 7 (1)..16, 28, 38, 90, 148, 151–153, 155, 178, 303, 304

(2).....16, 155, 298

(3) 156, 298

(4) 157, 298

(5) ..4, 35, 63, 122, 133, 138, 143, 144, 289, 303

(6) 6, 139, 295

(7) 24, 26, 27, 30, 249, 307

(8) 134, 289

(9) 134, 289

(10) 8, 21, 66, 142

s. 8.....182, 183

(1) 103, 177, 180, 183, 256, 262, 387

(2) 185, 197

(3) 165, 168, 207

(4) 173, 176

(5) 182

(6) 182

(7) 160, 305

(8) 228

(11).....186, 357

(12).....160, 305, 306

(13).....184, 191

(14).....167, 183, 185

57 & 58 Vict., c. 30 Finance Act, 1894—*continued.* PAGE
s. 8 (15).....196, 310
(18)..... 196
s. 9..... 220
(1) 77, 186–188, 196, 212, 231, 454
(2) 161, 228, 231, 311, 314
(3) 161, 190, 228, 312
(4) 209, 229
(5) 97, 98, 201, 216, 231, 232
(6).....9, 99, 216, 231
(7) 202
s. 10 184
(3).....161, 306
s. 11 .....195, 198
(1).....191, 310, 314
(2).....192, 312, 314
(3)..... 195
(4).....195, 198
s. 12 .....141, 161, 193, 295
s. 13 356
(1)..... 194
(2)..... 195
s. 14 230
(1).....210, 211, 213, 218, 229
(2)..... 230
(3)..... 230
s. 15 (1)..... 89, 263
(2)..... 128, 264, 384, 515
(3)..... 261
(4)..... 266
s. 16 (1)..... 119, 285, 305
(3)..109, 122, 125, 243, 296, 341, 381, 443, 513
(5)..... 120
s. 17 20
s. 18 ..408, 416, 423, 431, 433, 451, 453, 454, 474, 484, 495, 506, 537
(1)..... 453, 498
(2)..... 456
s. 20 ..... 157, 260, 273, 275, 315
(2)..... 181, 189, 209
s. 21 (1)..... 2, 247, 391
(3) 241, 455
(5) 250
s. 22 (1) 4, 5, 7, 9, 13, 143, 144, 148, 165, 167, 183, 190, 209, 282
(2) 8, 10, 11, 37, 40
(3) 244, 445
s. 23 94
(1) 184, 230
(2) 230
(4) 184, 191
(5) 161, 168
(6) 168

		PAGE
57 & 58 Vict., c. 30	Finance Act, 1894—*continued.*	
	s. 23 (8)	5
	(9)	5
	(10)	148
	(11)	165
	(13)	173
	(14)	94
	(15)	94
	(16)	94, 99
	(17)	99, 215
	(18)	96, 98
	(15)	454
	(19)	445
	First Schedule	323
57 & 58 Vict., c. 60	Merchant Shipping Act, 1894, s. 176	287
59 & 60 Vict., c. 25	Friendly Societies Act, 1896, s. 56–59	286
59 & 60 Vict., c. 28	Finance Act, 1896	**592**
	s. 14	255, 256
	s. 15	29
	(1)	251
	(2)	251
	(3)	251
	(4)	250
	s. 16	28, 89, 158, 159, 307
	s. 18 (1)	158, 186, 190, 321
	(3)	357
	s. 20	129, 265, 371, 384, 515
	(2)	167, 177
	s. 21	260, 267
	s. 23	454
59 & 60 Vict., c. 35	Judicial Trustee Act, 1896, s. 3	375
60 & 61 Vict., c. 65	Land Transfer Act, 1897	169, 187
	s. 2	165
	s. 13	195, 199, 312, 500
	(3)	190
61 & 62 Vict., c. 10	Finance Act, 1898	**595**
	s. 13	2, 244
62 & 63 Vict., c. 99	Ionian Bank (Limited) Act, 1899, s. 2	287
63 & 64 Vict., c. 7	Finance Act, 1900	**596**
	s. 11 (1)	30, 48, 49, 52, 96
	(2)	96
	s. 12	1
	(1)	241
	(2)	130
	s. 13 (2)	183
	s. 14	256
3 Edw. 7, c. 46	Revenue Act, 1903, s. 14	120, **598**
7 Edw. 7, c. 13	Finance Act, 1907	268, **598**
	s. 12	241
	s. 13	186, 357
	s. 14	193
	s. 15	267
	s. 16	1, 130

		PAGE
10 Edw. 7, & Geo. 5, c. 8	Finance (1909-10) Act, 1910 .. 34, 184, 201, 269, 301, 390–392, 407, 432, 444, 449, 450, 507, 518–521, 537, **600**	
	s. 54 ..... 2, 20, 269	
	s. 55 ..... 2, 245, 246, 249	
	s. 56 486	
	(1) 160	
	(2) 160	
	(3) 160	
	s. 57 ..... 96, 150	
	s. 58 ..... 323, 340, 392, 412, 442, 443, 521	
	(2) 331, 519, 520, 525, 527	
	(3) 520, 521	
	(4) 341, 444, 519	
	s. 59 ..... 30, 235	
	(1) 35, 36, 48, 238	
	(2) 37, 52	
	(3) 35, 40, 42, 48	
	s. 60 (1) 143, 456	
	(2) 134, 290	
	(3) 184, 495	
	s. 61 (1) 122, 143	
	(2) 120, 305	
	(5) 146, 266, 456, 490, 516	
	s. 63 ..... 129, 265, 371, 384, 515	
	s. 64 ..... 241, 448	
	s. 96 (3) 445	
1 & 2 Geo. 5, c. 48	Finance Act, 1911, s. 18 ..... 143, 456, **609**	
2 & 3 Geo. 5, c. 8	Finance Act, 1912, s. 9 .. 129, 146, 177, 266, 456, 490, 516, 522, **609**	
3 & 4 Geo. 5, c. 16	Foreign Jurisdiction Act, 1913 317	
3 & 4 Geo. 5, c. 31	Industrial and Provident Societies (Amendment) Act, 1913—	
	s. 5 287	
	s. 6 287	
4 & 5 Geo. 5, c. 5	Superannuation (Ecclesiastical Commissioners and Queen Anne's Bounty) Act, 1914, s. 7.. 286	
4 & 5 Geo. 5, c. 10	Finance Act, 1914..2, 223, 227, 244, 246 247, 270–272, **609**	
	s. 13 (1) 2, 116, 118, 280, 305, 514	
	(2) 119, 341, 382, 404, 443, 513	
	s. 14 .. 2, 20, 95, 122, 244–247, 249, 260, 269, 308, 516, 532	
	s. 15 ..... 2, 12, 259, 260, 276, 280, 302	
	s. 16 241	
4 & 5 Geo. 5, c. 76	Death Duties (Killed in War) Act, 1914..257, 260, **613**	
	s. 1..... 280	
	(1).....258, 386	
	(2)..... 259	
	(3)..... 259	
	s. 2.....129, 130, 260, 261, 387	
	(1)..... 260	
4 & 5 Geo. 5, c. 86	Superannuation Act, 1914, s. 1..... 286	

		PAGE
5 & 6 Geo. 5, c. 81	American Loan Act, 1915, s. 1 (3)	237, **613**
5 & 6 Geo. 5, c. 89	Finance (No. 2) Act, 1915	**614**
	s. 46	260, 387
	s. 47	236
	s. 48	317
6 & 7 Geo. 5, c. 24	Finance Act, 1916	**614**
	s. 63	237
	s. 67	317
7 & 8 Geo. 5, c. 31	Finance Act, 1917	**615**
	s. 29	257, 386
	s. 34	319
7 & 8 Geo. 5, c. 51	Air Force (Constitution) Act, 1917	256, 257
8 & 9 Geo. 5, c. 15	Finance Act, 1918	**616**
	s. 38 (1)	287
	(2)	287
	s. 42	319
	s. 44	258, 386
8 & 9 Geo. 5, c. 30	Naval Prize Act, 1918, s. 4	288
8 & 9 Geo. 5, c. 55	School Teachers (Superannuation) Act, 1918	262
9 & 10 Geo. 5, c. 32	Finance Act, 1919	2, 76, 281, **616**
	s. 29	241
	s. 30	146, 158, 161, 273, 321, 405, 539
	s. 31	257, 386
	Third Schedule	144
9 & 10 Geo. 5, c. 37	War Loan Act, 1919, s. 5	287, **617**
10 & 11 Geo. 5, c. 12	Savings Banks Act, 1920—	
	s. 4	289
	s. 8	287
	s. 10	289
10 & 11 Geo. 5, c. 64	Married Women's Property (Scotland) Act, 1920.	11
10 & 11 Geo. 5, c. 67	Government of Ireland Act, 1920	101
	s. 28	276, 317
	s. 69	317
11 & 12 Geo. 5, c. 31	Police Pensions Act, 1921	263
	s. 14 (6)	288
11 & 12 Geo. 5, c. 32	Finance Act, 1921	**618**
	s. 43	129, 260, 387
	s. 44	266, 371, 384, 515
11 & 12 Geo. 5, c. 58	Trusts (Scotland) Act, 1921	201, 505
12 & 13 Geo. 5, c. 16	Law of Property Act, 1922	304
	s. 128	300, 461
12 & 13 Geo. 5, c. 17	Finance Act, 1922—	
	s. 21	137, **618**
	s. 30	347
	s. 44	23, 159, 220
	s. 45	273, 274
12 & 13 Geo. 5, c. 4	Irish Free State (Agreement) Act, 1922	100
12 & 13 Geo. 5, c. 55	Constabulary (Ireland) Act, 1922, Schedule, Part II., paragraph 15 (3)	288
13 Geo. 5, Session 2, c. 1	Irish Free State Constitution Act, 1922, s. 2	100
13 Geo. 5, Session 2, c. 2	Irish Free State (Consequential Provisions) Act, 1922	101
	s. 5	275, 441

		PAGE
13 & 14 Geo. 5, c. 14	Finance Act, 1923, s. 37	109, **619**
(Irish Free State) Number 8 of 1923	Double Taxation (Relief) Act, 1923	441
14 & 15 Geo. 5, c. 21	Finance Act, 1924, s. 38	129, 261, 387, **620**
15 & 16 Geo. 5, c. 18	Settled Land Act, 1925	178, 202, 470, 503, 507
	s. 1	13
	s. 7 (1)	171
	s. 8 (3)	171
	(6)	171
	(7)	232
	s. 22	241
	s. 117 (1)	231
	s. 119 (3)	171
	First Schedule	172
15 & 16 Geo. 5, c. 19	Trustee Act, 1925	313
	s. 6	375
	s. 63	377
15 & 16 Geo. 5, c. 20	Law of Property Act, 1925	2, 167, 169, 195, 200, 306, 314, **620**
	s. 16	490
	(1)	170
	(2)	178
	(3)	201, 232, 492
	(4)	5, 180, 181, 187, 205, 207, 497
	(5)	174, 180, 187, 205
	(6)	172, 180, 186, 500
	(7)	194, 311, 500
	s. 17	490
	(1)	199, 506
	(2)	181, 190, 200, 497
	(3)	158, 190, 453, 463, 493, 497, 534
	(4)	180, 189, 499
	s. 18	230
	(1)	202, 492
	(2)	492
	s. 21	378
	s. 34	6
	s. 36	6
	s. 53	79
	s. 176	188, 454
	s. 199	197
	s. 205 (1)	170, 178, 199, 282
	First Schedule, Part IV.	6
15 & 16 Geo. 5, c. 21	Land Registration Act, 1925	171, 306, **623**
	s. 3 (xvii)	170, 282
	(xxi)	199
	(xxxi)	199
	s. 49 (2)	232
	s. 59 (2)	232
	s. 73	490
	(1)	199, 499
	(2)	180, 189, 499
	(3)	170

		PAGE
15 & 16 Geo. 5, c. 21	Land Registration Act, 1925—*continued.*	
	s. 73 (4)	178
	(5)	181, 190, 199, 497
	(6)	158, 190, 453, 463, 493, 497, 534
	(7)	499
	(8)	195, 199, 312
	(9)	195, 312, 501
	(10)	201, 232, 492
	(11)	174, 180, 181, 187, 497
	(12)	202, 230, 492
	(13)	230, 492
	(14)	172, 180, 500
	s. 87	171
15 & 16 Geo. 5, c. 22	Land Charges Act, 1925	197, 200, 507, **627**
	s. 10 (1)	191, 231, 499
	(4)	499
	s. 13 (2)	197, 200, 232, 506
	s. 14 (2)	232
	s. 20 (8)	200
	(13)	231
15 & 16 Geo. 5, c. 23	Administration of Estates Act, 1925	196, 203, 212, 213, 219, 244, 410, 445, 506
	s. 1	170
	s. 3	170
	s. 7	165
	s. 22	170
	s. 23	170
	s. 24	170
	s. 33	6
	s. 35	208, 349
	s. 36 (9)	200, 228, 494
	(10)	172
	s. 41	208
	s. 42	377
	(2)	377
	s. 44	344, 394
	s. 45 (1)	330
	s. 46	8
	s. 47	254
	s. 53 (3)	5, 187, 203, 207, 219
	s. 55 (1)	200, 355, 385
	First Schedule, Part II.	187, 204
15 & 16 Geo. 5, c. 36	Finance Act, 1925	76, 242, **629**
	s. 23	144, 145, 147, 281
	s. 24	416, 444, 485, 499, 507
15 & 16 Geo. 5, c. 47	Fire Brigade Pensions Act, 1925, s. 12	286
15 & 16 Geo. 5, c. 49	Supreme Court of Judicature (Consolidation) Act, 1925—	
	s. 168	317
	s. 169	317
	s. 169 (4)	317
15 & 16 Geo. 5, c. 55	Education (Scotland) (Superannuation) Act, 1925	263
15 & 16 Geo. 5, c. 59	Teachers (Superannuation) Act, 1925	262
	First Schedule, paragraph 8	289

		PAGE
15 & 16 Geo. 5, c. 84	Workmen's Compensation Act, 1925, Second Schedule, paragraph 2	287
16 & 17 Geo. 5, c. 29	Adoption of Children Act, 1926	**631**
	s. 5 (3)	343
16 & 17 Geo. 5, c. 60	Legitimacy Act, 1926	443, **631**
	s. 7	343
	s. 9	343
17 & 18 Geo. 5, c. 10	Finance Act, 1927	3, 123, 131, 242, **631**
	s. 31	137
	s. 51	1, 130, 241
	s. 52	441
17 & 18 Geo. 5, c. 11	Finance Act (Northern Ireland), 1927, s. 6 (1)	441
18 & 19 Geo. 5, c. 17	Finance Act, 1928	**632**
	s. 30 (2)	235
	(3)	235
18 & 19 Geo. 5, c. 26	Administration of Justice Act, 1928	317
19 & 20 Geo. 5, c. 23	Companies Act, 1929—	
	s. 103	102
	s. 104	102
19 & 20 Geo. 5, c. 29	Government Annuities Act, 1929—	
	s. 20	287
	s. 21	287
	s. 56	287
	s. 57	287
19 & 20 Geo. 5, c. 35	Fire Brigade Pensions Act, 1929, s. 1 (*c*)	286
20 & 21 Geo. 5, c. 28	Finance Act, 1930	50, 52, 76, 116, 134, 281, **633**
	s. 33	1, 3, 76, 116, 241
	s. 34	3, 54, 57, 65–67, 76, 77, 125, 136, 229
	(1)	55, 59, 62, 64–69
	(2)	55, 58
	(3)	59
	(4)	60
	(5)	61
	(6)	59
	(7)	67, 130
	s. 35	3, 57, 65, 69–77, 229, 292
	(2)	74
	(3)	75, 130
	s. 36	3, 76, 177, 183
	(2)	229, 232
	(4)	76, 77, 137
	s. 37	3, 76, 77, 135–138
	(1)	66, 67
	(2)	136
	(3)	138
	s. 38	3, 53, 60, 63, 73, 135
	s. 39	3, 30, 49, 52
	s. 40	3, 129, 264, 371, 384, 515
	(2)	167, 177, 266
	(4)	264
	s. 52	287
	Second Schedule	116
20 & 21 Geo. 5, c. 37	Adoption (Scotland) Act, 1930	**641**
	s. 5 (4)	343

INTRODUCTION.

THE death duties payable in respect of the estates of persons dying at the present time are—

1. Estate Duty.
2. Legacy Duty.
3. Succession Duty.

Estate Duty is payable, at rates graduated according to the value of the estate, on all property passing on death without regard to the persons who benefit or their relationship to the deceased.

Legacy Duty and Succession Duty are taxes on the actual benefit coming to the legatee or successor. The rates vary with the relationship of the legatee or successor to the testator or predecessor, and (except as to the 1 per cent. rates) do not depend like Estate Duty on the amount or value of the property passing. Legacy Duty is only payable on personal property (not including leaseholds) under wills or intestacies and on donations *mortis causa*; while Succession Duty is payable on all gratuitous acquisitions on death except where Legacy Duty is chargeable.

The duties treated of in this work are those payable on a death occurring at the present time, i.e., after the passing of the Finance Act, 1930; and where the term "deceased" is used it may be assumed, unless otherwise stated, to refer to a person who has died after that date.

Only one reference to decided cases is given in the text, but complete references will be found in the Table of Cases.

The text of the Statutes relating to the existing duties is given in the Appendix at the end of the book; but for an exhaustive collection, both of the Statutes and of the Statutory Rules and Orders, reference may be made to "The British Death Duty Acts, 1796-1924," and Supplements, issued by H.M. Stationery Office.

The following abbreviations are employed in the text :—

A. E. A. 1925	-	Administration of Estates Act, 1925.
F. A.	- -	Finance Act.
F. A. 1910	- -	Finance (1909-10) Act, 1910.
L. C. A. 1925	-	Land Charges Act, 1925.
L. D. A. 1796	-	Legacy Duty Act, 1796.
L. P. A. 1925	-	Law of Property Act, 1925.
L. R. A. 1925	-	Land Registration Act, 1925.
L. T. A. 1897	-	Land Transfer Act, 1897.
S. D. A. 1853	-	Succession Duty Act, 1853.

PART I.

ESTATE DUTY.

This duty was imposed in its present form by the F. A. 1894, and is payable in the case of all persons dying after 1st August, 1894. It practically superseded Probate Duty and Account Duty and is chargeable on all property passing on death, without regard to the relationship of the beneficiaries to the deceased owner.

The rates of duty depend on the amount or value of the property passing, and run from 1 per cent. for an estate exceeding £100 up to 50 per cent. for an estate of over £2,000,000 (F. A. 1930, s. 33).

The sweeping provision that the duty is payable on all property "passing" upon the death of the deceased (F. A. 1894, s. 1) brought within the area of taxation not only property which belonged to him absolutely, including his real estate (which formerly did not bear the analogous Probate Duty), but also property in which he had only a limited interest (as, for instance, a life interest), and even property in which he had no interest at all. It is sufficient to attract the duty that the property should "pass," or, by virtue of the Acts, should be "deemed to pass," on his death (F. A. 1894, s. 2).

For determining the *rate* of Estate Duty, a new principle was introduced by the F. A. 1894, called "aggregation" (F. A. 1894, s. 4, amended by F. A. 1900, s. 12, F. A. 1907, s. 16, and F. A. 1927, s. 51). Thus

where several distinct estates pass on a person's death, as, for instance, his free estate under his will and settled property under his marriage settlement, in order to determine the rate of duty in respect of any particular estate, it is necessary to aggregate it with or add it to, the other estates passing. The appropriate rate of duty for the aggregated total will then be the rate of duty payable in respect of the particular property under consideration. There are, however, exceptions to this principle which will be explained in due course.

Formerly settled property which had borne Probate Duty was exempt from Estate Duty (F. A. 1894, s. 21 (1), as amended by F. A. 1910, s. 55) and so also was settled property which had once borne Estate Duty (F. A. 1894, s. 5 (2), as amended by F. A. 1898, s. 13, and F. A. 1910, s. 55), but in the latter case a further Estate Duty called Settlement Estate Duty was charged by way of compensation (F. A. 1894, s. 5 (1), and F. A. 1910, s. 54). The F. A. 1914, however, abolished Settlement Estate Duty, and caused Estate Duty to be imposed on each passing of settled property, subject to an important exception in the case of married persons (F. A. 1914, s. 14).

The F. A. 1914 also provided for a "quick succession" discount where land or a business or any interest therein again becomes liable to Estate Duty within five years (F. A. 1914, s. 15) and reduced the full amount of duty where the margin above the next step in the scale is small (F. A. 1914, s. 13 (1)).

The F. A. 1919 raised the rate of interest on death duties to 4 per cent.

The chief effect of the Property Acts of 1925, so far as death duties are concerned, was to make personal representatives accountable for the duties on land in England and Wales, and to release it when sold from the charge of duty, unless such charge is registered.

The F. A. 1927 abolished an important exemption from aggregation, viz., in the case of property settled by a person who died before the F. A. 1894.

The F. A. 1930 increased the rates of duty on large estates (s. 33), introduced elaborate new provisions to check the evasion of duty through the machinery of companies (ss. 34–38), amended a defect in the provisions relating to the surrender of annuities—disclosed by *A.-G.* v. *Lane Fox*, [1924] 2 K. B. 498 (s. 39), and consolidated the rules dealing with notable works of art, etc., which are exempted until sold, assimilating the method of charging duty, when a sale takes place, to the method in force in the case of timber (s. 40).

The text of the Acts relating to Estate Duty is given in the Appendix, commencing p. 576.

Estate Duty will be considered under the following heads:—

1. The Property upon Which it is Payable.
2. The Rates and Amount of Duty Payable.
3. The Persons Accountable and Incidence of the Duty.
4. Exemptions and Allowances.
5. Practice.

CHAPTER I.

THE PROPERTY UPON WHICH ESTATE DUTY IS PAYABLE.

The duty is imposed on all property, real or personal, settled or not settled, which passes on the death of the deceased (F. A. 1894, s. 1). The phrase "property passing" includes not only property which actually passes but is made to cover certain other property which might not have come within the meaning of the term "passing," but which for Estate Duty purposes is to be "deemed to pass" (F. A. 1894, s. 2). It also includes, besides property passing immediately on the death, property passing after an interval, either certainly or contingently and either originally or by way of substitutive limitation, and the expression "on the death," includes "at a period ascertainable only by reference to the death" (F. A. 1894, s. 22 (1) (*l*)).

The expression "property" includes real property and personal property and the proceeds of sales thereof respectively and any money or investment for the time being representing the proceeds of sale (F. A. 1894, s. 22 (1) (*f*)).

The duty is payable on the principal value at the date of the death: that is, the market value at that time (F. A. 1894, s. 7 (5)).

Property passing or deemed to pass on death may be considered under the following headings:—

(A) The deceased's free estate.

(B) Property of which the deceased was competent to dispose.

(C) Settled property.
(D) Interests ceasing.
(E) *Donationes mortis causa,* or death-bed gifts.
(F) Gifts *inter vivos.*
(G) Release of life interest.
(H) Transfers to companies.
(I) Joint property.
(J) Policies and interests provided by the deceased.
(K) Scottish entailed estate.
(L) Property outside Great Britain.

A.—Deceased's Free Estate.

Estate Duty is payable on the deceased's free estate in Great Britain: that is, the ordinary forms of real and personal property in England, and heritable and moveable property in Scotland, which a man owns and can dispose of as he pleases, and which pass under his will or intestacy (F. A. 1894, ss. 1, 2 (1) (*a*), 22 (1) (*f*), and 23 (8) and (9)).

It makes no difference for this purpose where the deceased was domiciled, except as regards certain Government securities, which are exempt from British taxation while owned by persons domiciled and resident outside Great Britain and Northern Ireland (pp. 236–237).

The distinction between real and personal property, which affects the time and mode of payment of the duty, requires some explanation as regards freehold land held on trust for sale. The general rule is that such a trust converts the land into personalty for all purposes, but this is subject to exceptions. The L. P. A. 1925, s. 16 (4), provides that nothing in that Act shall alter any duty in respect of land, and the A. E. A. 1925, s. 53 (3), contains a corresponding provision. As a result, any property which is converted into personalty only by means of a trust for sale imposed by either of those Acts is still treated as real property for death duty purposes. This

applies (*a*) to undivided shares acquired before 1926, in cases governed by Part IV of the First Schedule to the L. P. A. 1925 (*re Tuck, A.-G.* v. *Public Trustee*, [1929] 2 K. B. 77), (*b*) to similar shares acquired after 1925, in cases governed by s. 34 of the same Act, (*c*) to beneficial joint tenancies, in cases governed by s. 36 of the same Act, and (*d*) to an intestate's real estate, or a share thereof, in cases governed by s. 33 of the A. E. A. 1925, where it passes again on the death of the person entitled under the intestacy. But if the land is subject to a non-statutory trust for sale, it is taxable as personalty (*A.-G.* v. *Lomas* (1873), L. R. 9 Ex. 29; *In the Goods of Gunn* (1884), 9 P. D. 242; *A.-G.* v. *Dodd*, [1894] 2 Q. B. 150). It should be observed that this consequence follows from the ordinary form of conveyance to would-be tenants in common since 1925, where the land is conveyed to the grantees as joint tenants expressly on trust for sale.

Besides real and personal property actually in his possession, the deceased's estate may include an interest in expectancy, *i.e.*, property to which he was entitled in reversion. For instance: *A* by will gives a sum of £1,000 to *B* for life and on his death to *C*. *C* is said to have a reversion in the £1,000 expectant on the death of *B*, and if he dies before *B*, the fund, subject to *B's* life interest, forms part of *C's* estate and is liable to Estate Duty accordingly. But the duty may be paid either at *C's* death or on the death of *B* when it falls into possession (F. A. 1894, s. 7 (6)). If the duty is paid at *C's* death the value as a reversion should be accounted for. If, however, it is decided to postpone payment until *B's* death, when the reversion falls in, its value as a reversion must still be added to or aggregated with the rest of *C's* estate in order to determine the correct rate of duty on the latter, and when the fund falls into possession by the death of *B*, duty has to be paid on its

value at that date, the rate being ascertained by aggregation of such value with the value (at *C's* death) of the rest of his estate (*re Eyre,* [1907] 1 K. B. 331). (As to treating the rest of the estate, if it does not exceed £1,000, as an estate by itself, and the reversion as settled property, *see* p. 127.) The term "interest in expectancy," includes an estate in remainder or reversion and every other future interest, whether vested or contingent, but it does not include a reversion expectant on the determination of a lease (F. A. 1894, s. 22 (1) (*j*)). Nor does the expression include a policy on the life of another person. So where a testator dies possessed of property subject to a lease for a term of years or, in other words, a freehold ground rent, payment of Estate Duty on the reversion may not be deferred until the lease falls in, but should be accounted for on the basis of the market value of the property subject to the existing lease, *i.e.,* the value of the ground rent plus the value of the reversion. Similarly, if the deceased owns a policy on the life of another person who survives him, his executors must account for the saleable value of the policy as part of the testator's estate.

Where the deceased, being tenant for life of settled property, acquired (under the will or intestacy of a deceased remainderman, or otherwise) the immediate and absolute reversion to the property or a share thereof, expectant on the termination of his own life interest, the property or share, as the case may be, falls to be treated as part of his free estate, and not as passing under the settlement. If, however, there is an intervening life interest (*i.e.,* where the limitations are to the deceased for life, with remainder to *X* for life, with remainder to the deceased absolutely), the property passes on the deceased's death as settled property, and the payment of Estate Duty under the settlement covers the deceased's reversionary interest, for duty is not leviable

more than once in respect of the same property in connection with the same death (F. A. 1894, s. 7 (10)).

As to interests *pur autre vie, see* p. 21, *infra.*

Moneys payable to the legal personal representatives of the deceased, as such representatives, are *primâ facie* part of his free estate for all purposes (*Chapman* v. *Chapman* (1864), 33 Beav. 556). Such moneys are therefore normally chargeable with Estate Duty: even if they cannot be said actually to pass on the death, they are property of which the deceased was competent to dispose. This applies to sums payable under most of the newspaper insurance schemes (*re Lambert, Public Trustee* v. *Lambert* (1916), 85 L. J. 279). It makes no difference that the deceased in such cases may not have been the actual subscriber. If the scheme provides only for payment to, or for the benefit of, relatives of a specified class, the money is not part of the free estate but may be taxable under heading "J" of the present chapter, as a benefit purchased or provided by the deceased.

Where the deceased did not make a will and leaves no next-of-kin, his real and personal property, falling in default to the Crown, the Duchy of Lancaster or the Duke of Cornwall (under s. 46 of A. E. A. 1925) are still liable to Estate Duty.

B.—Property of which the Deceased was Competent to Dispose.

Property passing on death is deemed to include property of which the deceased at the time of his death was competent to dispose (F. A. 1894, s. 2 (1) (*a*)). A person is "competent to dispose" of property when he has such an estate or interest therein or such a general power as would, if he were *sui juris,* enable him to dispose of it (F. A. 1894, s. 22 (2) (*a*)). It is immaterial that the deceased by reason of some disability, such as infancy or lunacy, was not for the time being legally

able to dispose of the property. If he would have been able to dispose of it apart from his disability, Estate Duty is payable.

Included under this heading, apart from the deceased's free estate, are the following:—

(1) Entailed property.
(2) Property over which the deceased had a general power of appointment.
(3) Money which the deceased had a general power to charge on property.
(4) Revocable gifts.
(5) Accretions under the Wills Act, 1837, s. 33.

The deceased's severable share of property under a joint tenancy also constitutes property of which he was competent to dispose, but joint property is separately considered under heading "I" of this chapter. This basis of liability has also been adopted as regards the benefit of a charge on settled property, to which a deceased limited owner was entitled under the F. A. 1894, s. 9 (6), in respect of Estate Duty which he had paid out of his own pocket (*Lord Advocate* v. *Moray,* [1905] A. C. 531). This, however, might well be regarded as an ordinary asset, actually passing on the limited owner's death as part of his free estate.

A life tenant, who is empowered to appropriate for his own benefit such part of the capital of the settled property as he may require, is not regarded as competent to dispose of the part which he does not require.

(1) *Entailed Property.*

Property of which the deceased was tenant in tail in possession is taxable as *passing* on his death. The definition of a person competent to dispose includes expressly a tenant in tail *whether in possession or not* (F. A. 1894, s. 22 (1) (*a*)), but if a tenant in tail in remainder dies without disentailing, and subsequent

limitations under the settlement continue to subsist, the case is considered to be covered by the exemption in favour of settled property where the interest of the deceased fails or determines before it becomes an interest in possession (F. A. 1894, s. 5 (3); pp. 252–255, *infra*).

A tenant in tail is none the less competent to dispose where the ultimate reversion to the entailed property is in the Crown (*A.-G.* v. *Richmond* (*No.* 2), [1907] 2 K. B. 940).

As to Scottish entailed estate, *see* pp. 94–99, *infra*.

(2) *General Power of Appointment.*

For the purpose of rendering the holder competent to dispose, a general power includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument *inter vivos* or by will, or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself, or exercisable under the Settled Land Acts, or as mortgagee (F. A. 1894, s. 22 (2) (*a*)). For example, *A* by will gives £1,000 to *B* for his life and on his death directs it to go in such manner as *B* by will shall appoint, and in default of appointment, to *C* absolutely. *B* surrenders his life interest to *C* more than three years before his death, but omits to release the power. The fund is property of which *B* is competent to dispose and so is liable to Estate Duty on his death, even if he does not exercise the power.

If the property over which the deceased had a general power of appointment consists of moveable property outside Great Britain, it is liable to British Estate Duty only (1) if the property was the subject of a British settlement (F. A. 1894, s. 2 (2); *re Lovelace* (1859), 4 De G. & J. 340; *re Wallop's Trust* (1864), 1 De G. J. & Sm. 656), or (2) if the deceased, dying domiciled in Great

Britain, actually exercised the power by his will (F. A. 1894, s. 2 (2); Revenue Act, 1845, s. 4).

Where the deceased had a general power of appointment over property subject to an outstanding life interest, and has died without exercising the power, the exemption conferred by the F. A. 1894, s. 5 (3), is again *primâ facie* applicable.

Except in the two instances specifically mentioned, it makes no difference for the present purpose whether the general power is exercised or not.

(3) *General Power to Charge on Property.*

Money which the deceased had a general power to charge on property is deemed to be property of which he had power to dispose (F. A. 1894, s. 22 (2) (*c*)). For example, *A* devises a house to his son, subject to a power for *A's* wife by deed or will to charge on it a sum of £200. On the wife's death Estate Duty is leviable in respect of the £200 as property of which she was competent to dispose, and this is so whether she exercised the power or not.

(4) *Revocable Gifts.*

Property comprised in a revocable gift is clearly property of which the donor is competent to dispose. Estate Duty was accordingly held to be payable on the donor's death in respect of a Scottish donation *inter virum et uxorem*, although actually unrevoked (*Inland Revenue* v. *Gunning's Trustees*, [1907] S. C. 800). Gifts of this particular kind, however, were made irrevocable by the Married Women's Property (Scotland) Act, 1920. In the case of a settlement, where a person reserves or is given a power to revoke the trusts and declare new ones, he is not considered competent to dispose if the power is exercisable only (*a*) with the consent of any other person

or persons, or (*b*) subject to a condition that he shall not exercise it in his own favour or for his own benefit.

Revocable gifts are taxable alternatively under the F. A. 1894, s. 2 (1) (*c*), incorporating the Customs and Inland Revenue Act, 1881, s. 38 (2) (*c*).

If the donor releases his power of revocation in his lifetime, the gift will escape liability on the ground of competency to dispose, but, if he dies within three years of the release, the property will be chargeable as a gift with reservation.

(5) *Accretions under the Wills Act,* 1837, *s.* 33.

It will be remembered that, under this provision, a gift by will to the testator's child or other issue is preserved from lapsing where the beneficiary predeceases the testator, provided that the beneficiary leaves issue living at the testator's death. The gift takes effect as if the beneficiary had died immediately after the testator, and the property devolves under the beneficiary's will or intestacy. It is therefore property of which the beneficiary was competent to dispose, and is chargeable with Estate Duty in connection with his death, as well as in connection with the death of the testator (*re Scott,* [1901] 1 K. B. 228). The property should be valued as at the time when it accrues, for it comes to the beneficiary's estate only by virtue of a fiction that he died immediately after the testator, and the benefit of the fiction carries with it a corresponding burden of duty. Moreover, the accretion is aggregable with the beneficiary's other property, and a higher rate of duty may become leviable on the latter. The maximum allowance of 50 per cent. for *Quick Succession* is given where the accretion consists of land or a business (F. A. 1914, s. 15; pp. 276–280, *infra*).

These statements do not apply to cases where a testator provides expressly that, if a legatee predeceases

him, the legacy shall be payable to the legatee's representatives. This, if the legatee in fact predeceases, is a direct gift to the living persons who actually benefit, and there is no liability to duty in connection with the death of the original legatee (*Lord Advocate* v. *Bogie,* [1894] A. C. 83).

C.—Settled Property.

Property is said to be settled, under English law, when it is limited to or in trust for persons by way of succession (F. A. 1894, s. 22 (1) (*h*) and (*i*); S. L. A. 1925, s. 1). As to the meaning of "settled property" in Scotland, see *Lord Advocate* v. *Stewart's Trustees* (1899), 1 Fra. 416. It embraces "every device known to conveyancers by which the enjoyment of estate under the same deed or will may be had by different persons succeeding to the estate in their due order." To take the simplest example—the property is given by deed or will to *A* for life with remainder to *B* absolutely.

Estate Duty is payable in respect of the principal value of all property, real or personal, *settled or not settled,* which passes on death (F. A. 1894, s. 1). Property passing is deemed to include property in which the deceased or any other person has an interest ceasing on the death of the deceased (s. 2 (1) (*b*)). It may be said in the first place that property, of which the deceased was tenant for life and to which a remainderman becomes entitled in possession on the death, whether absolutely or in turn for life only, is property actually passing within the meaning of s. 1. Such property does not fall to be treated as property in which the deceased had an interest ceasing on his death within the meaning of s. 2 (1) (*b*), for s. 2 (1) has been held to come into play only in relation to property which does *not actually pass,* and "you might just as well strike the word 'settled' out of s. 1 altogether as hold that the section does not

embrace a case where a limited interest under a settlement ceases on death and passes to no one" (*Cowley* v. *Inland Revenue Commissioners,* [1899] A. C. 198). The point, however, is of theoretical rather than practical interest. Though there is a special formula for the valuation of property which is to be charged under s. 2 (1) (*b*), it seems that the ultimate liability, where the interest ceasing is commensurate with the property passing, would be the same under either head, *except* perhaps in the cases of interests *pur autre vie* and annuities which continue for a limited period after the death (pp. 21 and 28, *infra*).

Under a "tontine" provision, where income is divisible in shares between a number of persons, with survivorship, there is an actual passing on each successive death of a share of the capital equivalent to the income enjoyed by the deceased. Estate Duty is payable on the principal value of that share and *not* on a proportionate share of the actuarial capital value of the income for the remainder of the "tontine" period (*re Northcliffe, Arnholz* v. *Hudson,* [1929] 1 Ch. 327).

If property actually passes on the death of a life tenant, the liability to Estate Duty is not affected—

(A) by the question whether the settlement was voluntary or otherwise, unless the case falls within the exemption in favour of property passing by reason only of a *bonâ fide* purchase for full consideration in money or money's worth (pp. 238–240, No. 8); or

(B) by the question whether the settlement was made by the deceased or by another person, though in the former case there may be further liability on the ground of a gift within three years or gift with reservation; or

(C) by any provision for forfeiture or determination of the deceased's interest on the happening of

some event in his lifetime, *e.g.*, on his bankruptcy, unless such event has actually happened. If the event has happened within three years of the death or the deceased was not wholly excluded from benefit after the event, there is a possible liability under the head of *Release of Life Interest* (pp. 48–52).

It may be observed that Estate Duty is generally payable in respect of settled property in which the deceased surrendered his life interest to the remainderman, either within three years of his death or with some reservation.

In order to attract Estate Duty on a "passing," there must be a passing in substance as well as in form. If property was settled during the life of the deceased on one set of trusts, under which some person other than the deceased was entitled to a share of income, and after the death is subject to fresh limitations under which the same person takes a share either of income or of capital, there is no taxable passing of the part of the property which was enjoyed by the same person both before and after the death. For example, where a fund is given on trust to pay an annuity to *A* for life and the surplus income to *B* and *C*, and on *A's* death the capital is given to *B* and *C* absolutely, the "slice" of the fund required to produce the annuity is chargeable on *A's* death by reason of the *cesser* of his interest, but there is no passing of the surplus capital (*re Townsend*, [1901] 2 K. B. 331). The converse case, where the property as a whole unquestionably passes but is (or was) charged with an annuity payable to some person other than the deceased, is on a somewhat different footing and is dealt with in connection with *deductions* (pp. 153–155, *infra*).

With regard to deductions, it may be mentioned that incumbrances on settled property stand in a different position theoretically from debts and incumbrances

affecting the free estate. In the latter case the whole estate passes and deduction is made under the express terms of the F. A. 1894, s. 7 (1) and (2), which impose certain conditions: in particular, voluntary debts are not allowable. But in the case of settled property it is only the net value of the property which is considered to pass, so that an incumbrance may in certain cases be deducted notwithstanding that it was created otherwise than for full consideration (pp. 152–153).

Settled property is the sphere for a number of important *Exemptions and Allowances.* Attention is called in particular to items 6, 7, 9 to 16 (inclusive), 29, 30 and 32, summarised in the list on pp. 233–234, and thereafter discussed.

Discretionary Trusts.

No Estate Duty is payable, either on the ground of a *passing* or of the *cesser* of an interest, on the death of a recipient of income under a discretionary trust, where that trust continues after the death. No express exemption is provided, but the property which might be supposed to pass is not susceptible of measurement or valuation. This principle applies on the death of a person entitled as of right to any surplus income unexpended on the primary objects of the discretionary trust, as well as on the death of one of such primary objects. For example, a fund is settled on trust at the discretion of the trustees to apply the whole or any part of the income on the maintenance of *A* and *B* or either of them, and subject thereto on trust for *C* for life with remainder to *D* absolutely. No Estate Duty is chargeable on the death of *A* (leaving *B* surviving) or on the death of *C* (leaving *A* and *B* or either of them surviving). But on the death of the survivor of *A* and *B*, when the discretionary trust terminates, there is an actual passing of the whole fund, from a "class" of persons to a

particular person. It may happen that the particular person was a member of the "class," but no member had any enforceable right to any part of the income, and therefore, just as it was impossible to fix any proportion of the property as passing on a death during the continuance of the discretionary trust, it is impossible to fix any proportion as *not* passing on the death which brings the discretionary trust to an end. The principle of *re Townsend* (*supra*) consequently cannot be applied. The position is the same even if the person who becomes entitled to the capital or income as of right was one of the primary objects of the discretionary trust. If, however, the trustees have power to accumulate the surplus income, and the power is still valid at the date of the death upon which the discretionary trust terminates, Estate Duty will *not* be chargeable on that occasion. In the above example there was before the death a "class" of persons who were bound between them to receive the whole income. Where there is power to accumulate there is no such "class," and no *passing*. Neither is there any cesser of interest, so as to attract Estate Duty.

Guidance on some of the foregoing points will be found in the Irish case of *A.-G. (I.)* v. *Power*, [1906] 2 I.R. 272.

The liability to duty depends in each instance on the legal rights of the parties: it makes no difference how a discretionary trust is in fact exercised or whether a power to accumulate is acted on or not.

If the deceased was the settlor, Estate Duty may be payable on the ground of a gift with reservation (pp. 41–42, *infra*).

Subsidiary Devolutions.

Interests in expectancy have already been touched on as an item in the deceased's free estate: they come into view from a somewhat different angle when the life tenant is "the deceased" and the reversions have fallen into

possession. In every case where a reversioner, having either a vested interest or a contingent interest which in the event has taken effect, has predeceased the life tenant, a grant of representation is necessary, and duty is payable (unless previously paid while the interest was still in expectancy) in connection with the reversioner's death—in *addition* to the duty payable in connection with the life tenant's death. If the same reversionary interest has devolved on successive deaths, grants are necessary and duties are payable in the case of each deceased person through whom the title of the living claimant to the property is traced (*Partington* v. *A.-G.* (1869), L. R. 4 E. & I. App. 100). Where the reversion has not already been accounted for as part of the deceased reversioner's estate, the duties now payable under his will or intestacy still depend on the law in force at the time of his death.

If that event occurred before the 2nd August, 1894, and the reversion is personal property, Probate Duty or, in Scotland, Inventory Duty will be chargeable, instead of Estate Duty. The scale of Probate Duty and Inventory Duty under the Customs and Inland Revenue Act, 1881, is: for estates not exceeding £300 gross, 30s.; for estates exceeding £100 and not exceeding £500, £1 on each £50 or part thereof; for estates exceeding £500 and not exceeding £1,000, £1 5s. on each £50 or part thereof; and for estates exceeding £1,000, £3 on each £100 or part thereof. The rates, other than the 30s., are for net values. This scale applies where a grant was or is first obtained on or after the 1st June, 1881, even if the death took place before that date. If a grant was extracted before that date but not before 1st April, 1880, the scale in the Customs and Inland Revenue Act, 1880, applies; if before the 1st April, 1880, then the scale in the Stamp Act, 1815. In English cases where a grant of representation was obtained in the first place

(on or after 1st June, 1881), the omitted asset should be accounted for at its value at the date of the original Inland Revenue Affidavit leading to that grant, calculated in accordance with the ascertained facts (Customs and Inland Revenue Act, 1881, s. 32). That is to say, the value of the property actually falling into possession should be discounted back. Probate Duty is assessed on the reduced value and interest on the duty is charged as from the date of the original affidavit. If, however, the original grant was obtained before the 1st June, 1881, Probate Duty is levied on the value of the omitted asset as at the date of the Corrective Affidavit, and all accretions must be included. The latter method applies to additional inventories for Inventory Duty in Scotland, whether confirmation was granted before or after 1881 (Heritable Securities (Scotland) Act, 1860, s. 5; *H.M. Advocate* v. *Findlay (Kennedy's Factor)* (1890), 28 S. L. R. 596). In all cases where the death occurred before the 2nd August, 1894, and no grant has yet been obtained, so that the *original* Inland Revenue Affidavit or Inventory is rendered after the reversion has fallen into possession, the asset falls to be valued at the date of the Affidavit or Inventory, and all accretions should be included.

The English form of Inland Revenue Affidavit in Probate Duty cases is *Form* A—unless the death occurred on or after the 1st June, 1881, and either the personal estate does not exceed £100 gross or the 30s. duty is to be paid, in which cases *Form* B is used. The Corrective Affidavit for Probate Duty is *Form* D. Scottish Inventories and Additional Inventories in pre-F. A. 1894 cases are given up in manuscript. Instructions and models are contained in *Form* H. Probate Duty and Inventory Duty are payable only on personal estate in the United Kingdom. In addition, Temporary Estate Duty at 1 per cent. may be payable under the Customs and Inland

Revenue Act, 1889, where either the personal estate or the benefit to any successor exceeds £10,000.

It may be mentioned that the payment of Estate Duty *in connection with the life tenant's death* secures exemption from any Legacy Duty at 1 per cent. or Succession Duty at 1 or 1½ per cent. which would have been payable under the will or intestacy of a reversioner in whose own case Estate Duty is not chargeable (F. A. 1894, s. 5 (2)).

If the reversioner died after the 1st August, 1894, but before the 12th May, 1914, having settled his reversion, Settlement Estate Duty may still be payable under the F. A. 1894, s. 5 (1) (*A.-G.* v. *Smith,* [1923] 2 K. B. 531). The rate is 1 per cent. in the case of deaths before the 30th April, 1909 (F. A. 1894, s. 17), and 2 per cent. in the case of deaths on or after that date (F. A. 1910, s. 54). The duty is not leviable where the only life interest is that of the husband or wife of the deceased. Moreover, it is not claimed in cases where it would immediately be allowable against the Estate Duty chargeable in connection with the death of the life tenant, on which the reversion falls into possession, *i.e.,* where the latter duty would not have been chargeable but for the F. A. 1914, s. 14.

Where, by devolution, purchase or otherwise, the life tenant has become entitled to the immediate reversion, expectant on the termination of his own life interest, in any share of the capital of the settled property, such share should be segregated and treated as part of the life tenant's free estate. But if the life tenant has acquired only an ultimate reversion, expectant on the termination of another life interest which follows his own, the whole property should be treated as passing under the settlement. The Estate Duty payable on the life tenant's death under that title will then satisfy the liability in respect of the reversion as an asset in his free estate, for Estate Duty in respect of any property

is not leviable more than once on the same death (F. A. 1894, s. 7 (10)).

Interests pur autre vie.

Property in which the deceased had an interest *pur autre vie, i.e.,* for the life of another person, and nothing more, is not considered to pass on his death as settled property. All that passes is the interest *pur autre vie,* which (valued for the life of the *cestui que vie, i.e.,* the person during whose life the interest endures) is an asset in the deceased's free estate. But where the deceased had at least an interest for his own life, and in the events an interest *pur autre vie* in addition, the property itself passes and Estate Duty is payable under the settlement on the principal value. That duty satisfies the liability in respect of the continuing interest as an asset in the free estate, for the principal value of the property includes the interest *pur autre vie.* This position arises, for example, where a testator gives the income of his residuary estate equally to *A, B* and *C* until the death of the last survivor of them and then gives the capital to other persons, or where property is settled on *D* for life with remainder to *E* for life and remainders over, and *D,* having acquired *E's* interest by assignment, dies leaving *E* surviving.

Where the owner of an interest *pur autre vie* settles it on a person (other than the *cestui que vie*) for life, Estate Duty seems in strictness to be payable on that person's death, if the interest *pur autre vie* is then subsisting, in respect of the principal value of the property originally settled, as property in which the deceased had an interest ceasing on his death (*cf. A.-G.* v. *Coole,* [1921] 3 K. B. 607, p. 27, *infra*). In practice, however, duty might be accepted on the then value of the interest *pur autre vie.* For example: *A* by will settles a sum of War Stock on *B* for life with remainder to *C*. *B* sells his life interest to *D*. *D* by deed or will settles

that interest on *E* for life with remainder to *F*. On *E's* death, leaving *B* surviving, Estate Duty is apparently chargeable on the value of the War Stock, but might be taken on the value of what actually passes from *E* to *F*, viz., an interest for the remainder of *B's* life.

On the death of the *cestui que vie* the corpus of the property actually passes, unless the same person has acquired both the deceased's interest and the immediate reversion expectant on his death. Thus if a fund is held on trust for *A* for life, then for *B* for life, then for *C* absolutely, and *A* sells his life interest to *D*, the property nevertheless passes on *A's* death, viz., from *D* to *B*. But if *D* had purchased *B's* interest as well as *A's*, and *B* survived *A*, there would (obviously) be no passing on *A's* death. If, however, the person acquiring the deceased's interest was already entitled to an interest in remainder or reversion in the property, Estate Duty may be payable under the head of *Release of Life Interest* (pp. 48–52, *infra*).

State Entails.

It is especially provided with regard to any land or chattels settled, whether by Act of Parliament or Royal Grant, so that no one of the persons successively in possession is capable of alienating the same (whether his interest is a tenancy for life or in tail), that the provisions of the Finance Acts as to settled property are not to apply, and the property passing on the death of any person in possession of the land and chattels is to be the interest of the successor therein, and such interest is to be valued for Estate Duty purposes in like manner as for the purpose of Succession Duty : viz., on the value of the annual income of the property for the life of the successor (F. A. 1894, s. 5 (5)). Estate Duty is therefore payable on each devolution.

These provisions apply to Crown entails—that is, estates provided by Parliament in consideration of public

services and settled so that they cannot be alienated. Of such a character are the estates attached to the Earldom of Nelson and the Dukedom of Wellington. They relate also to a larger class of cases where estates have been settled by private Acts of Parliament at the instance of the owners for the time being.

The principle of charging the successor's interest involves two corollaries. First, the property taxable is property in which the deceased never had an interest: as such it is exempt from aggregation and forms an "estate by itself" (*Nevill* v. *Inland Revenue Commissioners*, [1924] A. C. 385; p. 124, *infra*). Secondly, the duty is payable *primâ facie* out of the successor's interest, not out of the corpus of the property (*re Bolton Estates Act*, 1863, [1904] 2 Ch. 289). Under the F. A. 1922, s. 44, however, the duty may be paid out of the corpus (p. 220, *infra*).

Annuities and pensions granted by the State in perpetuity in respect of notable services to the State are not liable to Estate Duty, if directed in the original grant to be "clear of all taxes and deductions whatever." Where such an annuity has been redeemed by the State by payment of a capital sum, Estate Duty is payable on each death on the value of the investments representing such sum, which cannot be regarded as coming within the description of "chattels" as used in the F. A. 1894, s. 5 (5) (*re Exmouth's Annuity*, [1925] 1 Ch. 280). It was also decided in that case that aggregation is not excluded on the death of a tenant for life.

D.—Interests Ceasing.

Property passing on death is deemed to include property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest (F. A. 1894, s. 2 (1) (*b*)).

It may be observed in the first place that this provision operates only in the case of property which does not actually pass on the death within the meaning of s. 1 of the Act. Where the property itself passes, Estate Duty is payable on the principal value under s. 1 without regard to the interests ceasing (*Cowley* v. *Inland Revenue Commissioners,* [1899] A. C. 198; pp. 13–14, *supra*). Thus if a fund is held on trust during the life of *A* to pay an annuity to his wife and the surplus income to him, and on his death the fund goes to *B* absolutely, there is a passing of the whole fund on *A's* death, and the cesser of the wife's annuity is not in point.

Notwithstanding the reference to the benefit accruing or arising, "it is not the interest which some person succeeds to on a death, which many persons think is the subject of taxation, but it is the interest which ceases by reason of the death" (*A.-G.* v. *Penrhyn* (1900), 83 L. T. 103). It is a condition of liability that *some* benefit shall arise, but, if that condition is satisfied, the *value* of the benefit for the purpose of duty is an artificial one, determined as follows:—

(1) If the interest extended to the whole income of the property, Estate Duty is payable on the principal value of that property (F. A. 1894, s. 7 (7) (*a*)).

(2) If the interest extended to less than the whole income of the property, Estate Duty is payable on the principal value of an addition to the property equal to the income to which the interest extended (F. A. 1894, s. 7 (7) (*b*)).

The most obvious example of the interest extending to the whole income is a fund, set aside to provide for an annuity given to the deceased and yielding the exact amount required—or less. It is arguable, however, in this case (as in almost every other case where

s. 7 (7) (*a*) would otherwise apply) that the fund actually passes within the meaning of s. 1 of the Act.

Where the interest extended to less than the whole income of the property involved, the cesser attracts Estate Duty, in effect, on a "slice" of the property sufficient to produce the income set free. For example: *A* by will gave an annuity of £50 to his sister *B* charged on real estate worth £120 per annum. On *B's* death, Estate Duty is payable on so much of the property charged as is required to produce £50 per annum: *e.g.*, if the property is worth £2,400 at her death, on $\frac{50}{120} \times £2,400 = £1,000$. In ascertaining the annual value of real or leasehold property for this purpose, deduction should be made for repairs (*Lord Advocate* v. *Fothringham*, [1924] S. L. T. 2). On the other hand, regard is not to be had to any incumbrances on the property, unless they are so large as to cause the annuity to abate. Thus, on the cesser of an annuity, payable out of heritable property which, being burdened with bonds, was worth only seven years' purchase of the net rents after deduction of the interest on the bonds, but, as disburdened of the bonds would have been worth fourteen years' purchase of the net rents, it was held that the principal value of an addition to the property, equivalent to the annuity, was properly calculated at fourteen years' purchase (*Lord Advocate* v. *Henderson's Trustees* (1905), 42 S. L. R. 720).

If it is impracticable to apply the "slice" method, a notional capital for Estate Duty may be created by ascertaining the sum necessary, on the basis of the normal rate of interest obtainable at the time of the death, to produce the annuity which has ceased. At present $4\frac{3}{4}$ per cent. is considered a normal yield on trustee securities.

Should the annuity have been given free from Income Tax, the interest ceasing is the gross annual sum

necessary after tax is deducted to produce the net annuity. Thus if an annuity of £5,000 is given free of Income Tax and the tax is at 4s. 6d. in the £, the gross annuity ceasing is £6,451 12s. 3d., and Estate Duty is chargeable on the equivalent capital.

In view of the foregoing provisions, the question, whether a case falls under s. 1 or s. 2 (1) (*b*) of the Act, can rarely be of practical importance. The combined effect of ss. 2 (1) (*b*) and 7 (7) is that the property or "slice" of property, to which the ceasing interest extended, is not only deemed to pass but is taxed on the same basis as if it actually passed. In particular, the value of the benefit to the immediate successor is not brought into question. He may take a limited interest only, and the ultimate remaindermen may not yet be ascertainable: duty is payable nevertheless on the basis of capital values. Again, where the deceased was entitled for her life to an annuity of £800, charged on certain lands, and on her death £400 per annum became charged on the lands in favour of another person, it was held that Estate Duty was payable by the landowner, under s. 7 (7) (*b*), in respect of the cesser of the deceased's whole £800 and not merely on the cesser of £400, the net gain to him (*Inland Revenue* v. *Maclachlan* (1899), 1 Fra. 917).—"It is the benefit accruing or arising to the property which is the test of the amount of duty payable." Perhaps the simplest explanation of the liability under this head is that it attaches to all property *set free* for the enjoyment of others.

On the question, what constitutes an interest for the purpose of s. 2 (1) (*b*), it has been held that Estate Duty is payable on the cesser of an annuity in every case in which the annuitant has a right to have recourse to the property out of which the annuity is payable, provided that by reason of the annuitant's death a benefit has accrued to the property (*A.-G.* v. *Watson,* [1917] 2

K. B. 427). In the case cited the annuitant died *two days* after the testator by whose will the annuity was given, but as her representatives were entitled to an apportionment in respect of those days it could not be said that her interest failed or determined before it became an interest in possession, for the purpose of the exemption conferred in that event (F. A. 1894, s. 5 (3); pp. 252–255, *infra*). Again, where a fixed annual sum was directed to be paid out of the income of part of a residuary estate for the maintenance of the testator's son during minority, Estate Duty was held to be chargeable, on the son's death under twenty-one, in respect of a slice of the fund commensurate with the annual sum (*A.-G.* v. *Coole*, [1921] 3 K. B. 607). The Court rejected the defences (1) that the gift was not an annuity but a legacy of the maximum amount which could come within the direction (having regard to the son's age at the testator's death), payable by instalments, subject to termination, and (2) that the property taxable, if any, was the maximum amount which could have become payable between the date of the son's death and the date when he would have attained twenty-one. The latter argument was considered to be negatived expressly by the words "principal value" in the F. A. 1894, s. 7 (7). The effect of the decision in general terms is that if an annuity is given to a beneficiary for x years if he so long live or (in converse form) for life subject to termination after x years, Estate Duty is payable on the annuitant's death within the x years, exactly as if the annuity had been given to him for life simply. Similarly it makes no difference to the liability that the deceased's interest may have been terminable on some uncertain event in his lifetime, *e.g.*, on his bankruptcy, provided that the event has not happened. It is of interest to note that if an annuity for x years were given to a beneficiary absolutely, and he died within the x

years, Estate Duty would be leviable only on the value of the annuity for the unexpired period, as an asset in the beneficiary's free estate. This asset is all that would actually *pass* on the death, and it would be impossible to apply s. 7 (7), because, *ex hypothesi,* the interest of the deceased did *not cease* on his death.

In the special case where an annuity is, by the will or deed creating it, expressed to be payable to two or more persons for their joint lives, with remainder, as to the whole annuity, to the survivors and survivor for lives and life, the gift is considered to be of *one* annuity only, continuing until the death of the last annuitant. On the death of any annuitant, other than the last survivor, it is only his interest in the annuity which ceases, and Estate Duty is claimed only on the actuarial value for the remaining lives or life of the proportion so passing. The duty is not a charge on the property out of which the annuity issues, but is payable by the surviving annuitants or annuitant, and is allowed to be paid by instalments as under s. 16 of the F. A. 1896. The liability to duty in these circumstances rests on the *passing* under s. 1 of the F. A. 1894, rather than on the *cesser* of an interest, but it is conveniently dealt with in connection with other kinds of annuities. The theory is not applicable to the ordinary case where one annuity ceases on a death and another annuity of equal amount thereupon arises in favour of another person, or to cases where the annuity is either charged upon land or payable out of the income of property which actually passes on the death. Even in the special case first described it seems, in view of the decision in *A.-G.* v. *Coole, supra,* to be a matter of concession. Where, however, a testator settled a house and furniture on successive life tenants, and directed that the outgoings should always be paid out of his

residuary estate, it was held that Estate Duty was leviable, on the death of the first life tenant, not on the *cesser* of the annual sum required to defray the outgoings but on the *passing* of the right to enjoy the benefit of the direction, such right being valued in accordance with the estimated length of the period for which the direction would continue to subsist (*re Cassel, Public Trustee* v. *Mountbatten,* [1927] 2 Ch. 275). The case has been distinguished as "of a very special character" (*re Northcliffe, Arnholz* v. *Hudson,* [1929] 1 Ch. 327).

To attract Estate Duty there must be some identifiable property to which the liability can attach. If an annuity is payable to *A* for life under a bond given by *B,* no Estate Duty is payable on the cesser, as the annuity is dependent on *B's* personal security, and there does not exist any property in respect of which a benefit can arise by the cesser of the annuity. Similarly, in the case of an annuity given by will, which is not charged on specific property, and for which no fund or capital is directed to be, or is in fact, set aside, if the estate has been fully administered, so that the annuity is being paid as a personal liability of the residuary legatee, there is no identifiable property to which the annuitant can have recourse and consequently no property upon which Estate Duty can be charged at his death. Moreover, if the residuary legatee, on his own initiative and not in pursuance of any direction or express power in the will, sets aside a capital sum to provide for the annuity, exemption will be available *primâ facie* on the annuitant's death, on the ground of *Reverter to Settlor* (F. A. 1896, s. 15; *A.-G.* v. *Hannen* (1904), 48 Rep. C. I. R. cxxi; pp. 250–252, *infra*). But if the annuity was originally charged upon specific property and such property is released within three years of the annuitant's death, Estate Duty is payable

(F. A. 1900, s. 11 (1), as amended by F. A. 1910, s. 59; F. A. 1930, s. 39).

Although an annuity is the commonest interest falling under this head, the charge of duty is not limited to the cesser of any particular type of interest. Thus where the deceased settled certain policies on his life and also other funds out of the income of which the premiums were to be paid, Estate Duty was chargeable not only on the policy moneys (as a benefit purchased or provided by the deceased) but also on a slice of the funds set free by the *cesser* of the premiums (*Inland Revenue* v. *Scott's Trustees* (1918), 55 S. L. R. 654). It has also been decided that the deceased's share of goodwill, accruing to his surviving partners under the terms of the partnership deed, is property in which he had an interest ceasing on his death within the meaning of the F. A. 1894, s. 2 (1) (*b*), though in the particular case the share was exempt from duty as the subject of a purchase (*A.-G.* v. *Boden,* [1912] 1 K. B. 539).

Where by a will or settlement two or more persons (other than the settlor) are given a right of residence in certain property or a right of user of certain chattels, for their respective lives, no Estate Duty is payable on the death of one of such persons, in respect of the cesser of his interest, it being impracticable to apply the formula provided by the F. A. 1894, s. 7 (7). It is also impossible to distinguish any property as actually passing to the other persons or person entitled to the same rights. But on the death of the *last* person so entitled, the whole property passes. If, however, the right of residence or user is given to two or more persons with remainder to the last survivor absolutely, no Estate Duty will be payable on the death of the last but one, again because of the impossibility of valuation. It is assumed in these cases that the deceased had nothing more than a right of residence or user. If the property

could have been let or sold, and the deceased would then have been entitled to a share of the resulting income, Estate Duty would be chargeable as in the case of an ordinary tenant for life of a share of property (*cf. re Acklom, Oakeshott* v. *Hawkins,* [1929] 1 Ch. 177). And if the deceased was the original settlor, duty would be leviable, *primâ facie,* under the head of *Gift with Reservation.*

Where the interest of a person ceases on a death and at the same time he becomes entitled to another interest which then commences, Estate Duty as a general rule is only chargeable in respect of the actual beneficial accretion (*re Townsend,* [1901] 2 K. B. 331). If, for example, a fund is held on trust during the life of *A* to pay an annuity to *B* and the remainder of the income to *A,* and on *A's* death the whole income, or the capital, goes to *B,* no Estate Duty is payable in respect of the cesser of *B's* annuity. In the result the annuity "slice" is deducted in the account of the property passing on *A's* death. This principle does not apply, however, where the annuity is merely a charge on the interest of the tenant for life. In that case the property passing is taxable without any deduction in respect of the annuity (p. 154, *infra*).

In many of the cases which have been envisaged under this heading there may be an alternative liability, perhaps greater in extent, on the ground of *Gift with Reservation* or *Surrender of Life Interest* (pp. 39 and 48, *infra*). Thus Estate Duty is payable on the *whole* of any property of which the deceased made a gift or settlement at any time, subject to the payment of an annuity to himself for life. And if a person (whether the settlor or not) surrenders an interest which would cease on his death, duty is still leviable *primâ facie* if he dies within three years or if he is not entirely excluded from benefit. Where, for instance, an annuity

is payable out of a settled fund, and the annuitant releases the fund on terms that the other beneficiaries personally shall pay him an annuity, either of the same or a different amount, Estate Duty is chargeable on his death, even outside the three years period and notwithstanding that there is then no identifiable property to which he could have had recourse.

Exemptions and Allowances.

Special exemptions from liability to Estate Duty on the ground of *cesser* are conferred in the cases of—

(1) property in which the interest ceasing was an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole (F. A. 1894, s. 2 (1) (*b*); p. 238, *infra*); and

(2) the falling into possession of the reversion on a lease for lives, and

(3) the determination of an annuity for lives, where such lease or annuity was granted for full consideration in money or money's worth—with an allowance, or proportionate exemption, where there was partial consideration (F. A. 1894, s. 3; pp. 238–240, *infra*).

Reference should also be made to the exemptions and allowances numbered 6, 9–11, 13–15, 29, 30 and 32 in the list on pp. 233–234, and thereafter discussed.

E.—Donationes Mortis Causa.

A person when on his death-bed may make a gift of some article or sum of money to a friend or relation, which is only to take effect on the donor's death, there being a condition that if he recovers he shall resume his property in such gift. Such a disposition is called a *donatio mortis causa* and the property is liable to Estate Duty on the death of the donor (F. A. 1894, s. 2

(1) (*c*), incorporating Customs and Inland Revenue Act, 1881, s. 38 (2) (*a*).

It should be noted that not every subject of property can be given as a *donatio mortis causa*. In the first place, neither real nor leasehold property can, nor can stocks and shares without a transfer deed (*Moore* v. *Moore* (1874), L. R. 18 Eq. 474). The following have, however, been held capable of being so given: viz., furniture and other articles the property in which can be transferred by delivery, (*i.e.*, merely handing them over to the donee), promissory notes (*Veal* v. *Veal* (1859), 27 Beav. 303), but not of the donor (*re Leaper, Blythe* v. *Atkinson*, [1916] 1 Ch. 579), bills of exchange (*re Mead, Austin* v. *Mead* (1880), 15 Ch. D. 651), and cheques of a third person (see *re Leaper* above), but not of the donor unless cashed in his lifetime (*Bouts* v. *Ellis* (1853), 4 De G. M. & G. 249; *re Swinburne, Sutton* v. *Featherley*, [1926] Ch. 38), banknotes (*Miller* v. *Miller* (1735), 3 P. Wms. 357), bonds (*Snellgrove* v. *Bailey* (1744), 3 Atk. 214), assurance policies (*Amiss* v. *Witt* (1863), 33 Beav. 619), bank deposit receipts (*Cassidy* v. *Belfast Banking Co.* (1887), 22 L. R. I. 68), money in the Post Office Savings Bank by delivery of the pass book (*re Weston, Bartholomew* v. *Menzies*, [1902] 1 Ch. 680), and an exchequer bond acquired through the Post Office, by delivery of the exchequer bond deposit book (*re Lee, Treasury Solicitor* v. *Parrott*, [1918] 2 Ch. 320). There are three requisites for a valid *donatio mortis causa*: viz.—

(1) The gift must be made in contemplation of the expected death of the donor (*Duffield* v. *Elwes* (1827), 1 Bligh (N.S.) 497).

(2) There must be an actual or constructive delivery of the gift in the donor's lifetime. By a constructive delivery is meant the handing over of some thing or symbol which, though not the gift

itself, enables the donee to obtain possession of the gift (*re Wasserberg, Union of London and Smiths Bank* v. *Wasserberg,* [1915] 1 Ch. 195).

(3) It must be conditional, so that it only takes full effect on the death of the donor from the illness then upon him. If he recovers, the gift is defeated. This condition may be expressly stated or implied from the circumstances of the case (*Staniland* v. *Willott* (1752), 3 Mac & G. 664).

Donations of this description do not get the benefit of the exemptions from Estate Duty conferred by the F. A. 1910 in the case of ordinary gifts *inter vivos*: they are taxable, for example, where they do not exceed £100.

Legacy Duty in connection with the donor's death is chargeable in respect of death-bed gifts (Revenue Act, 1845, s. 4), and they are liable to satisfy his debts in case of a deficiency of the donor's other assets.

The Estate Duty on gifts of this kind is not a testamentary expense. It is a charge on the subject-matter of the gift, and if paid by the executor can be recovered by him from the donee (*re Hudson, Spencer* v. *Turner,* [1911] 1 Ch. 206).

F.—Gifts Inter Vivos.

Gifts *inter vivos,* other than donations *mortis causa,* fall into two classes—gifts within three years of death and gifts with reservation. In each case the subject-matter of the original gift is deemed to pass on the death. Sales or other dealings in the meantime do not affect the principle of liability, but they raise the question—what property has to be accounted for. If the gift is made by way of voluntary settlement (even if what the settlor provides is cash), the property taken under the gift is the settled property as a unit. In such cases duty is leviable on the property or fund as it

stands at the donor's death, assuming, of course, that nothing has been taken out of settlement and nothing further brought in from other sources. But if the gift is an absolute gift (in the sense that the donee has full control of the property), the duty is charged on the specific property taken by the donee, whether it is still in his hands at the donor's death or not. If it has been destroyed or has perished before the death (*e.g.,* if the gift was of a racehorse which died before the donor), no duty is payable. A gift with reservation is an absolute gift for this particular purpose, unless the property is actually *settled.*

The property chargeable, whatever it be, should be valued as at the donor's death, not as at the date of the gift, whether it has appreciated or depreciated in the meantime (F. A. 1894, s. 7 (5); *Strathcona* v. *Inland Revenue Commissioners,* [1929] S. C. 800). Allowance may, however, be claimed in respect of capital improvements effected by the donee or his alienees: if, for example, the gift was of a plot of land and the donee has built a house on it, only the site value is taxable. In the case of a gift of money (not by way of settlement), no question of valuation can arise: the value is the same at the date of the donor's death as it was at the time of the gift (*Strathcona* v. *Inland Revenue Commissioners, supra*).

No Estate Duty is payable in respect of property held by the deceased as trustee for another person under a disposition not made by the deceased or under a disposition made by him more than three years before his death, where *bonâ fide* possession and enjoyment of the property were assumed by the donee and retained to the entire exclusion of the deceased, or of any benefit to him by contract or otherwise, for at least three years before the death (F. A. 1894, s. 2 (3); F. A. 1910, s. 59 (1) and (3)). In other words, provided that the trust has been

duly constituted, a gift of which the donor is trustee is taxable or not taxable in connection with his death exactly as if a third person were trustee instead.

Neither Legacy Duty nor Succession Duty is payable on the donor's death in respect of out-and-out gifts *inter vivos*. Where, however, there is an enforceable beneficial reservation ceasing on his death (*e.g.*, a rent-charge or annuity), Succession Duty may be chargeable on the cesser of his interest (S. D. A. 1853, s. 7; pp. 431–433, *infra*).

Gifts within Three Years of Death.

Estate Duty is payable in respect of any property taken under a disposition made by the deceased, "purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust or otherwise," which is not *bonâ fide* made three years, or, in the case of a gift for public or charitable purposes, one year, before the death of the deceased (Customs and Inland Revenue Act, 1881, s. 38 (2) (*a*); Customs and Inland Revenue Act, 1889, s. 11 (1); F. A. 1894, s. 2 (1) (*c*); F. A. 1910, s. 59 (1)). The F. A. 1894 having deleted the word "voluntary" from the Act of 1881, the word "gift" has now to be read as meaning merely "disposition" (*A.-G.* (*I.*) v. *Smyth*, [1905] 2 I. R. 553, approved in *H.M. Advocate* v. *Heywood-Lonsdale's Trustees* (1906), 8 Fra. 724). The result is that all property which the deceased has *parted with* during the three years preceding his death is taxable *primâ facie*. Even property sold in the normal course of business escapes only by virtue of the express exemption of property purchased for full consideration (F. A. 1894, s. 3 (1); pp. 238–240, *infra*). As regards ordinary business transactions the point is of academic interest only: its practical importance is that in doubtful cases the onus is on the grantee to prove full consideration, not on the Revenue to prove an act of bounty. But the mere fact that the consideration was

somewhat less than the full value of the property is not in itself sufficient to show that the transaction was not a *bonâ fide* bargain and sale (*re Weir and Pitt's Contract* (1911), 55 Sol. J. 536). Where partial consideration is shown to have been given, a proportion of the property is taxable (F. A. 1894, s. 3 (2); p. 240, *infra*). It will be remembered that past services, if they have not given rise to an enforceable debt, are not *consideration* for a gift in recognition.

The disposition, to attract Estate Duty, need not be of property of which the deceased was the absolute owner. A disposition taking effect out of the interest of the deceased is deemed to have been made by him, whether the concurrence of any other person was or was not required (F. A. 1894, s. 22 (2) (*b*)). In the case of property in strict settlement, dealings with the inheritance are therefore dispositions by the tenant in tail in remainder, and benefits conferred by a re-settlement or by appointments under a joint power contained in a re-settlement, are *primâ facie* gifts by the tenant in tail in remainder for the present purposes (*A.-G.* v. *Farrell,* [1930] 1 K. B. 539).

The term "charitable" gifts is not in practice restricted to its technical meaning: a gift to a needy individual, made from charitable motives, may doubtfully be regarded as charitable.

Exemptions are conferred in the following cases by the F. A. 1910, s. 59 (2). Nos. (2) and (3) apply to public or charitable gifts within one year of the death, as well as to ordinary gifts within three years:—

(1) Gifts made in consideration of marriage. This is treated in practice as covering gifts made in *contemplation* of a marriage. For instance, *A* settles £5,000 on his daughter on the occasion of her marriage and dies within three years. No Estate Duty is payable on his death. Nor would

it be payable in respect of a sum covenanted in a marriage settlement to be paid on the covenantor's death, but in fact paid by him in his lifetime, within three years of his death. If, however, it remained unpaid at his death, no *deduction* could be taken in his estate in respect of the debt (F. A. 1894, s. 7 (1) (*a*); p. 148, *infra*).

(2) Gifts which are proved to the satisfaction of the Commissioners (*a*) to have been part of the normal expenditure of the deceased and (*b*) to have been reasonable, having regard to the amount of his income or to the circumstances. "Normal" in this context must be taken to mean "habitual." If it is read in any other sense (*e.g.*, "natural" or "reasonable") the two-fold condition is stultified. An example of the exemption occurs where a well-to-do man makes allowances to his children, amounting to perhaps a fifth of his income. On his death no claim for Estate Duty arises in respect of the payments made within three years. The exemption covers any ordinary annual payments, such as pensions to old servants and charitable subscriptions which the deceased has been in the habit of making and which are reasonable having regard to his means. The proportion of such amounts up to the date of death is not, however, a permissible deduction from the deceased's estate (F. A. 1894, s. 7 (1) (*a*); p. 149, *infra*). Gifts out of capital are not regarded by the Revenue as normal expenditure.

(3) Gifts which in the case of any donee do not exceed in the aggregate £100 in value or amount.

A payment or transfer made by the deceased within the three years or one year period is chargeable as a gift notwithstanding that it was made in pursuance of a

covenant entered into outside the period, unless the covenant was made for full consideration in money or money's worth or in consideration of marriage (*A.-G.* v. *Cobham* (1904), 90 L. T. 816, and—a case where the gift would now be exempt as a marriage portion—*H.M. Advocate* v. *Heywood-Lonsdale's Trustees* (1906), 8 Fra. 724). Similarly a gift *inter vivos* which is imperfectly made by reason of the proper formalities being omitted, if made perfect within the period, is liable to Estate Duty. If it remains imperfect at the death, through the omission of any essential thing requiring to be done by the intending donor, the property will form part of the free estate of the latter, there being "no equity to perfect an imperfect gift." An omission which can be repaired by the donee, such as the stamping or registration of a document, is apparently not material. A revocable gift falls under the head of property of which the deceased donor was competent to dispose.

The motive for making the gift is not in point, so that gifts made within the period under a moral obligation are none the less liable to duty (*A.-G.* v. *Chamberlain* (1904), 90 L. T. 581).

Gifts with Reservation.

Estate Duty is payable in respect of property taken under a gift by the deceased, *whenever made,* of which property *bonâ fide* possession and enjoyment were not assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the deceased, or of any benefit to him by contract or otherwise (Customs and Inland Revenue Act, 1889, s. 11 (1); F. A. 1894, s. 2 (1) (*c*)). If, however, by means of the surrender of the benefit reserved or otherwise, the property is subsequently enjoyed by the donee to the entire exclusion of the deceased, or of any benefit to

him by contract or otherwise, for three years, or, in the case of a gift for public or charitable purposes, one year, preceding the death of the deceased, the liability under the foregoing provisions is extinguished (F. A. 1910, s. 59 (3)).

There is an alternative liability to Estate Duty in respect of any property passing under a settlement made by the deceased by any instrument not taking effect as a will, whereby either (*a*) an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or (*b*) the settlor has reserved the right, by the exercise of any power, to restore to himself or reclaim the absolute interest in such property (Customs and Inland Revenue Act, 1881, s. 38 (2) (*c*); F. A. 1894, s. 2 (1) (*c*)). Case (*a*), however, is virtually superseded by the wider provisions set out in the last paragraph, while case (*b*) would now be regarded simply as one in which the settlor was *competent to dispose* (F. A. 1894, ss. 2 (1) (*a*) and 22 (2) (*a*); *Inland Revenue* v. *Gunning's Trustees,* [1907] S. C. 800).

It comes to this: Estate Duty is payable under all voluntary dispositions made by the deceased in his lifetime unless—

(*a*) the transfer of the property (or the beneficial interest) to the donee was duly completed; *and*

(*b*) the donee assumed *bonâ fide* possession and enjoyment of the property and thenceforward retained such possession and enjoyment; *and*

(*c*) the deceased was thenceforward entirely excluded from all beneficial interest in the property, and from the possession and enjoyment thereof, and also from any collateral benefit by contract or otherwise; *and*

(*d*) the transfer of the property, the assumption of possession and enjoyment by the donee and the

exclusion of the deceased all took place at least three years, or, in the case of a gift for public or charitable purposes, one year, before the death.

For the purpose of condition (*b*), it is not necessary that the original donee personally shall retain the property. It is sufficient that possession and enjoyment are retained by the donee and the persons deriving title under him. Similarly, if the gift is made by way of settlement, it is sufficient that possession and enjoyment are retained by the beneficiaries successively and the persons deriving title under them.

There is no breach of condition (*c*) unless the donor retains some *enforceable* interest. The words "by contract *or otherwise*" must be construed in accordance with the *ejusdem generis* rule. If *A* makes an absolute gift of a house and furniture to *B*, without any stipulation whatsoever, but continues to live in the house as *B's* guest until his (*A's*) death, more than three years later, no Estate Duty is payable (*H.M. Advocate* v. *M'Taggart Stewart* (1906), 43 S. L. R. 465—a case of release of a life interest; *A.-G.* v. *Seccombe,* [1911] 2 K. B. 688). In this example *B* does assume *bonâ fide* possession and enjoyment, and the question is only whether *A* is "excluded" within the statutory meaning. But if *A* remains in sole possession, without paying a full rack-rent, it cannot be said that *B* has assumed *bonâ fide* enjoyment, and Estate Duty is payable on *A's* death on this ground. It is of no avail that he was a mere tenant at will and therefore duly "excluded": the property is taxable unless *all* the conditions are satisfied. Nor can a donee be said to have assumed *bonâ fide* enjoyment of property where the donor has continued to receive the income for his own benefit, without any intervention by the donee.

Where under a settlement the income of the settled property is applicable at the discretion of the trustees

for the benefit of the settlor and other persons, or of any of them to the exclusion of the others, the property is chargeable with Estate Duty on the settlor's death on the ground that, notwithstanding the discretionary power of the trustees to exclude him from any benefit, an interest for life is reserved to him within the meaning of s. 38 (2) (*c*) of the Customs and Inland Revenue Act, 1881 (*A.-G.* v. *Heywood* (1887), 19 Q. B. D. 326).—"The application of the word 'interest' is not confined to a vested or a necessarily contingent interest. The Act was meant to cast a wider net than such a construction would imply." This decision was followed in *A.-G.* v. *Farrell,* [1930] 1 K. B. 539. Section 38 (2) (*c*) applies *à fortiori* to cases where the settlor retains a life interest which is liable to be determined in his lifetime, *e.g.,* by a provision for forfeiture on attempted alienation or by the exercise of a power of appointment. These, however, might equally well be regarded as cases of gifts of which *bonâ fide* possession was not assumed by the donees. If the settlor's interest in fact ceases more than three years before his death, possession being duly assumed by the beneficiaries to his entire exclusion, the charging provisions will, of course, no longer apply (F. A. 1910, s. 59 (3)).

The benefit need not be reserved out of the gift itself to attract Estate Duty. It is sufficient if a benefit is reserved as part of the transaction: for instance, an annuity secured to the donor merely by the personal covenant of the donee (*A.-G.* v. *Worrall,* [1895] 1 Q. B. 99).

Though the benefit reserved is usually in the nature of an annuity, it is not necessarily so. Other types of benefit which may attract Estate Duty are a covenant by the donee to pay the debts and funeral and testamentary expenses of the donor (*Grey* v. *A.-G.,* [1900] A. C. 124), and a power for the donor to charge a capital sum on the property (*Re Clark* (1906), 40 I. L. T. 117).

Where the gift comprised several items of property and the benefit was reserved out of one only, Estate Duty is payable, if the three-year period has expired, only on the item out of which the benefit was reserved; but where the reservation involves the whole of the gift or is a provision outside the property itself, Estate Duty is chargeable on the whole of the property, however small the benefit reserved. For example—

(1) Blackacre and Whiteacre, each worth £50 per annum, are conveyed by *A* to *B* subject to a rent-charge of £10 per annum, issuing from both properties, payable to A for life. Estate Duty is payable on *A's* death in respect of both properties (see *Grey* v. *A.-G., supra*).

(2) Blackacre and Whiteacre, each worth £50 per annum, are conveyed by *A* to *B* subject to a rent-charge of £10 per annum, issuing exclusively from Blackacre, payable to *A* for life. On *A's* death more than three years later, Estate Duty is payable in respect of Blackacre only.

(3) Blackacre and Whiteacre, each worth £50 per annum, are conveyed by *A* to *B*, who covenants to pay an annuity of £10 to *A* for life, the annuity not being charged on any part of the property. Estate Duty is payable on *A's* death in respect of both properties (see *A.-G.* v. *Worrall* and *Grey* v. *A.-G., supra*).

The principles are applicable equally to personal property.

Where the subject-matter of the gift is given upon trust for the benefit of the donee or donees, there must inevitably be a contingent resulting trust for the donor or settlor on failure of all the specified objects, but this contingent interest does not constitute a reservation for the present purpose, even if such ultimate trust is an express one (*re Cochrane,* [1906] 2 I. R. 200).

This case (*re Cochrane*) involved a further decision. The facts were that the deceased gave £15,000 to trustees to pay out of the income during the life of his daughter £575 per annum to her and the surplus to himself, and on her death to hold the capital for her issue or in default for himself absolutely. Estate Duty was held to be payable only on the capitalised value of the surplus income. It was considered that the settled fund could be severed into two parts, and that, as regards the part required to produce the annuity, the deceased was (save as to the ultimate trust, which has been dealt with above) excluded from all benefit. That part alone was the subject of the gift; the surplus income was not given, and therefore it could not constitute a reservation *out of* something which *was* given.

It will be observed that the case is roughly the converse of example (1), *supra*, where the benefit retained by the donor in effect *issued from the whole* of the property, and the principle can apply only so far as the immediate and permanent benefit to the donee or donees is a fixed one.

Transfers to companies, partaking of the nature of gifts with reservation, are the subject of special charging provisions (pp. 54–69).

Gift with Reservation or Purchase.

It is sometimes a matter of considerable difficulty to determine whether a transaction carried out more than three years before the death was a gift, or whether it was a *bonâ fide* sale and purchase for full consideration in money or money's worth, or whether it was a transaction partly by way of bounty and partly by way of sale. It has been shown above that any disposition by the deceased within three years of his death is a gift unless there was full consideration or except so far as there was partial consideration. The same statement may be

made of a disposition by the deceased at any time; and if there was a reservation in his favour, subsisting within three years, or, in the case of a disposition for public or charitable purposes, one year of his death, the transaction is *primâ facie* within the charging sections.

In all cases where there is an express reservation (as distinguished from cases where the donee merely omitted to assume possession and enjoyment), there is necessarily consideration of a sort, viz., the benefit reserved; and the following rules may be given to show how far that benefit avails to secure exemption from duty on the ground of *purchase* (F. A. 1894, s. 3; pp. 238–240, *infra*)—

(1) Where the reservation to the donor is an annuity equal to (or less than) the average annual income of the property, the transaction is in all cases a gift. For example, *A* gives a house worth £50 per annum to his son, on condition that the son pays him an annuity of £50 for life. On *A's* death, more than three years later, Estate Duty is payable on the principal value of the house at that date. The real effect of the transaction is simply to reserve a life interest to *A*. It makes no difference whether the annuity was charged on the house or not.

(2) Where the subject-matter is a sum of money and the reservation is an annuity equivalent to (or less than) an ordinary rate of interest on the amount, the transaction is a gift, even if the rate is higher than that obtainable on trust investments and higher than the rate actually earned by the money in the hands of the donee. For example, *A* gave £500 to a charity on terms that the latter should pay an annuity of £25 to him for life, and on his death to his widow for life. On *A's* death Estate Duty was held to be chargeable on the full sum of £500; for in effect he had made a gift of the amount subject to payment of the income at 5 per cent. to him and his wife

during their successive lives (*A.-G.* v. *Johnson*, [1903] 1 K. B. 617).

This decision established the principle that in cases in class (1) or (2), where the reservation or other consideration does not, or need not, encroach upon the *corpus* of the gift, there can be no deduction or allowance for the value of such reservation.

(3) Where the value of the reservation, for the life of the transferor or as the case may be, calculated at the time of the transaction, is approximately equal to (or greater than) the then value of the property, the transaction is a sale for full consideration, and no Estate Duty is payable on the grantor's death (F. A. 1894, s. 3 (1)). For example, *A*, a spinster aged fifty-five, possessed of cottage property worth about £280, which requires considerable annual repairs and is troublesome to manage, agrees with a friend *B*, who is a builder, to convey the property to him in consideration of an annuity of £25 for her life. The value of this annuity may be taken (from the Succession Duty table) as £275 19s. 6d. In these circumstances it is clear that no element of bounty on the part of *A* entered into the transaction, and no Estate Duty is payable on her death in respect either of the property or of the cesser of her annuity.

(4) Where the transferee has to put his hand into his own pocket, and the amount he pays, together with the value of the reservation to the transferor, is equal to (or greater than) the value of the property, the transaction is again a sale and purchase, and no Estate Duty is chargeable.

(5) Where the reservation is greater than the average income of the property, but the value of such reservation, for the life of the transferor or as the case may be, calculated at the time of the transaction, is less than the then value of the property, the transaction is partly a gift and partly a sale and purchase. To the extent of

the excess of the annual amount reserved over the annual income of the property, the transferee is giving consideration in respect of which he is entitled to an allowance under s. 3 (2) of the F. A. 1894 (p. 240, *infra*). For example, *A* gives to *B* a house of the principal value of £1,000 and annual value of £40, on terms that *B* pays *A* an annuity of £100 for his life, then worth five years' purchase. On one view, £40 of the annuity represents the income from the house, while the remaining £60 per annum is deductible consideration. The latter at five years' purchase is worth £300 or $\frac{3}{10}$ of the value of the house, and on this basis $\frac{7}{10}$ of the value of the house at *A's* death is taxable. There is an alternative formula, however, which is more favourable to the taxpayer. *A* has made a gift of a "slice" of the house, reserving the relative income (which is on a 4 per cent. basis), and has sold the remaining "slice." Let x represent the first slice, which will be liable to duty on *A's* death. The £100 annuity is made up of 4 per cent. on x, plus the other slice divided by the number of years' purchase for *A's* life.

Thus, $\frac{x}{25} + \frac{1000 - x}{5} = 100.$

$$x + 5{,}000 - 5x = 2{,}500.$$
$$-4x = -2{,}500.$$
$$x = 625.$$

To check the calculation,

£625 producing at 4 per cent.	£25
£375 value at five years' purchase of	£75
£1,000	£100

On this basis Estate Duty is payable on *A's* death on $\frac{625}{1000}$ of the then value of the house.

In cases which are near the border line between a gift and purchase, the whole of the circumstances must be regarded and each case considered on its merits.

Among the factors which should be taken into account are the state of health of the donor at the time of the transaction, the relationship (if any) between him and the transferee, and any special circumstances connected with the property, such as the impending necessity for considerable repairs, or a contingent liability for dilapidations, or difficulty in managing the property.

G.—Release of Life Interest.

Where the deceased or any other person had an interest limited to cease on the death of the deceased, and such interest was surrendered, assured, divested or otherwise disposed of, whether for value or not, to or for the benefit of any person entitled to an estate or interest in remainder or reversion, the property is, nevertheless, deemed to pass on the death, unless (*a*) the surrender, etc., was *bonâ fide* made three years (or, in the case of a surrender, etc., for public or charitable purposes, one year) before the death, *and* (*b*) *bonâ fide* possession and enjoyment of the property was assumed immediately upon the surrender, etc., and thenceforward retained to the entire exclusion of the deceased or other person who had the estate or interest limited to cease as aforesaid, or of any benefit to him by contract or otherwise (F. A. 1900, s. 11 (1); F. A. 1910, s. 59 (1)). The property will not, however, be deemed to pass by reason of a breach of condition (*b*), if, by means of a further surrender of the reserved benefit or otherwise, the property is subsequently enjoyed to the entire exclusion of the deceased or other person as aforesaid, or of any benefit to him by contract or otherwise, for three years (or, in the case of a surrender, etc., for public or charitable purposes, one year) preceding the death (F. A. 1910, s. 59 (3)).

Where any property was subject to an annuity or other periodical payment limited to cease on the death

of a person who dies on or after the 1st August, 1930, and such annuity or other payment was surrendered, assured, divested or disposed of during the lifetime of the deceased, whether for value or not, to or for the benefit of the person entitled to the property, the property is, nevertheless, deemed to pass on the death, to the extent of the benefit which would accrue from the cesser of that annuity or other payment, unless (*a*) the surrender, etc., was *bonâ fide* made or effected three years before the death, *and* (*b*) the person entitled to the annuity or other payment was not, within such period of three years, in receipt of any substituted annuity or other periodical payment limited to cease on his death, secured to him, whether by contract or otherwise, in return for the surrender, etc. (F. A. 1930, s. 39). It had previously been held that the owner of real estate, charged with an annuity, was not a person entitled "in remainder or reversion" within the meaning of the F. A. 1900, s. 11 (1), and consequently that the release of the annuity could not attract Estate Duty under that provision (*A.-G.* v. *Lane Fox,* [1924] 2 K. B. 498). In cases falling within the Act of 1930, duty is payable in respect of a "slice" of the property, ascertained in the same manner as if the annuity had not been released (pp. 24–25, *supra*). The material period under this Act is always three years, even where the release is for public or charitable purposes.

The special provisions as to surrenders were the consequence of decisions that Estate Duty was not payable (1) under the F. A. 1894, s. 2 (1) (*b*), in respect of the cesser of a life interest which was released before the death—because no benefit arose on the death (*A.-G.* v. *Beech,* [1899] A. C. 53), or (2) in respect of a gift *inter vivos* of the deceased's life interest—because there was nothing left to be taxed at the time of the death

(*A.-G.* v. *De Preville*, [1900] 1 Q. B. 223). These decisions still hold good in cases to which the special charging provisions do not apply.

Although the subject is treated in the F. A. 1910 in conjunction with *gifts*, it makes no difference whether the release was for value or not. If only voluntary releases were dealt with, legitimate evasion of duty would be easy, for if the life tenant were old or in failing health a trivial payment to him might be full consideration for his interest. Moreover, the word *divested* in the Acts of 1900 and 1930 extends the charge to cases where the property is *taken from* the life tenant, and not *given up* by him. Duty is therefore payable where the life interest is forfeited within the three-year period on bankruptcy, re-marriage or some similar contingency, or where it is destroyed within the period, for the benefit of a remainderman, by the exercise of some overriding power of appointment.

The estate or interest which is released need not apparently be an estate or interest in possession; but if a reversionary life tenant surrenders his interest, and it is still in reversion at his death, there will be exemption on the ground that the interest failed before it became an interest in possession (F. A. 1894, s. 5 (3)).

Where the property is settled on *A* for life, with remainder to *B* for life, with remainder to *C*, the Act of 1900 extends to a transfer of *A's* interest to *C*; but the point is important only if *B* predeceases *A*: otherwise there will presumably be an actual passing of the property on *A's* death, from *C* to *B*.

The sections under discussion do not apply to cases where the life interest is transferred to a stranger to the settlement, unless the transaction is carried out in pursuance of an arrangement for the benefit of the remainderman. But here again there will ordinarily

be an actual passing of the property on the original life tenant's death. If, however, the life interest and reversion are both assigned to a third person, whether for value or not, there will be no passing on the life tenant's death and no Estate Duty will be payable. It will be remembered that there can be no liability in respect of a gift of the donor's life interest, as such. Liability disappears in the same way where the life tenant and remainderman combine *bonâ fide* in conveying or assigning an absolute interest in the property to a third person, provided that the inclusion of the life interest is not for the benefit of the remainderman. That is to say, the liability disappears where the life tenant either receives a fair share of the consideration or makes a free gift to the third person. For similar reasons no Estate Duty is payable on the death of the former life tenant where he and the remainderman joined in "breaking" the settlement without any sale, provided that the property was divided in proportion to the values of their respective interests. But if in any such case the *substance* of the transaction is that the reversioner obtains the property, or the proceeds of sale, on payment of a comparatively small sum representing the value of the interest of a moribund life tenant, Estate Duty would be payable on the death of the latter within three years. None of the foregoing transactions destroys any liability to Legacy Duty or Succession Duty, and, if the property escapes Estate Duty, Succession Duty may be chargeable at the "higher rates" (pp. 448–451).

If the reversioner assigns his interest to the life tenant, the property is not deemed to pass under the settlement on the death of the latter, whether within three years or afterwards, but so far as not disposed of in his lifetime it will form part of his free estate. If, however, the reversioner dies within three years of the

assignment, Estate Duty is payable in connection with *his* death as on an ordinary gift, unless the assignment was made for full consideration in money or money's worth.

The conditions as regards the assumption of *bonâ fide* possession and enjoyment, and the exclusion of the surrenderor, are the same for the purposes of the F. A. 1900, s. 11 (1), as in the case of *gifts with reservation* (pp. 40–43). The F. A. 1930, s. 39, casts a smaller net: Estate Duty is payable, if the three-year period has expired, only where the deceased received a *periodical payment, limited to cease on his death*. If he accepted a substituted annuity for a term of years certain or for the life of another person, the section would not apply, and duty would normally be payable only on the value of the unexpired annuity, as an asset in the deceased's free estate or otherwise.

The exemptions conferred in the case of gifts by the F. A. 1910, s. 59 (2), do not apply to releases under the present heading. In particular, there is no exemption on the ground that the release was made in consideration of marriage. If, however, the property would have been exempt apart from the surrender, on the ground that it had previously borne Estate Duty or Probate Duty on the death of the life tenant's spouse, that exemption will still hold good.

Transfers to companies of property, in which the deceased had at any time a life interest, are the subject of separate charging provisions (pp. 69–76).

H.—Transfers to Companies.

The provisions of the F. A. 1930, imposing Estate Duty on companies, are designed to check the avoidance of duty, which could be achieved legitimately through the machinery of a company under private control, in cases where the substance of the transaction

was a gift or the release of a life interest, with reservations in favour of the donor or life tenant. The device was, shortly, to transfer the property to a company in consideration of shares which were taken by the donee or remainderman, while the donor or life tenant received such part of the income as he required from the company, usually or mainly in the form of a salary as governing director. The scheme of the Act is to levy Estate Duty, where the deceased was originally full owner, on a "slice" of the company's assets proportionate to the "slice" of the company's income which he received, or, where he had originally a life interest, to treat the actual property transferred, or the property by which it is represented, as passing on the death.

The Act applies only to a company (including any body corporate, wherever incorporated) which either—

(*a*) is so constituted as not to be controlled by its shareholders or by any class of shareholders, or

(*b*) has not issued to the public (or, in the case of a company which is about to make an issue of shares to the public, will not, when it has made that issue, have issued to the public) more than half the shares which carry the control (F. A. 1930, s. 38).

There is no definition for this purpose either of *controlled* or of *issued to the public*. Some degree of guidance as to the meaning of the latter expression may be found in the decisions under the Companies Acts as to the meaning of an *offer to the public*. Reference may be made to *Booth* v. *New Afrikander Gold Mining Co.*, [1903] 1 Ch. 295; *Sleigh* v. *Glasgow & Transvaal Options*, [1904] 6 Fra. 242, where an offer to relatives, friends and customers was held not to be an offer to the public; and *Sherwell* v. *Combined Incandescent Mantles Syndicate*, [1907] W. N. 110.

Property of which the Deceased was originally the Owner.

In considering s. 34 of the F. A. 1930, it is useful to have in view the type of case in which Estate Duty is intended to be levied. The following may serve as an example: *A* is the owner of an estate worth £80,000, including a mansion house, and of stocks and shares worth £120,000. He forms a company with a nominal capital of £200,000, divided into 50,000 5 per cent. preference shares and 150,000 ordinary shares, all of £1. He sells the estate and securities to the company in consideration of the shares, of which 50,000 ordinary shares are allotted to him and the rest to his wife and children. As part of the arrangement he is appointed governing director for life, at a salary of £5,000, and the mansion house, which is assessed for Income Tax at £550 per annum, is let to him, as governing director, at a rent of £100 per annum. On *A's* death, more than three years later, Estate Duty would formerly have been payable only in respect of the 50,000 shares which he retained. There was no gift to the company, for the company gave full consideration. The only gift was a gift of shares and *that gift* was not the subject of any reservation. No Estate Duty was payable in respect of the cesser of the £5,000 a year or of the tenancy of the mansion house, because *A's* interest was an interest as holder of an office (F. A. 1894, s. 2 (1) (*b*)).

The example, of course, suggests only a few of the features which might appear in such cases. *A* as governing director might have power to fix his own remuneration, or to borrow money from the company without interest—and in practice without question of repayment. Instead of his being director, the company as part of the consideration might agree to pay him an annuity—the cesser of which would be exempt from duty as the subject of a purchase. Expedients could be

multiplied indefinitely. The nominal capital of the company, obviously, need not bear any relation to the value of the property involved.

To attract Estate Duty, under s. 34 (1), the following conditions must all be satisfied:—

(1) A death on or after the 1st August, 1930.

(2) A company to which the Act applies, as defined above.

(3) A transfer of property by the deceased to the company.

(4) A benefit received by the deceased from the company, within the prescribed period, exceeding 50 per cent. of the company's income.

The *transfer,* which is further defined by sub-s. (2), may have been made at any time since the 31st July, 1918. Where the transaction was effected on or before that date, the section does not apply. But it applies to transfers before or after the Act and either more or less than three years before the death. In the case of transactions within three years there may be an alternative or additional claim for duty, in respect of a gift of shares or otherwise, but there is a special provision, noted below, against double taxation.

The transfer may have been made either "directly or indirectly," so that liability is not avoided by passing the property through the hands of nominees or of the intended beneficiaries. On the other hand, if *X* transfers property absolutely and unconditionally to *Y* and *Y* transfers it to a company, it cannot be said that *X* has made a transfer, even indirectly, to the company.

The section does not apply where—

(*a*) The transfer was a *bonâ fide* sale where the consideration was received or receivable wholly by the deceased for his own use and benefit, and

was satisfied or to be satisfied in one or more of the following forms:—

(i) A capital sum of fixed amount.

(ii) Shares in the company.

(iii) Debentures of the company.

"Satisfied" means *fully* discharged.

If, therefore, the consideration consists partly of shares allotted by the direction of the deceased to his family, or of his appointment to a salaried directorship, or of an annuity or rent, the transaction is not a *bonâ fide* sale for the present purpose. Subject to exception (*a*), it is immaterial whether the transfer was made for consideration or not.

If the deceased *bonâ fide* sold the property to the company in the first place, but afterwards gave back the purchase money or surrendered his share or debentures, the latter transaction would *primâ facie* be a transfer within the meaning of the section.

(*b*) Either the deceased or the company was acting in the capacity of trustee, factor, agent, receiver or manager.

Subject to express exceptions, the *property transferred* may be property of any description, or any interest in property. For practical purposes, however, it will almost always be land in Great Britain, stocks and shares, money and securities for money. Transfers of the following are specially excluded from the section:—

(*a*) Property in respect of which Estate Duty would not have been payable on the death of the deceased, if it had then been in his disposition, or any interest in such property. This excludes from the scope of the section, in particular, a transfer of immoveable property outside Great Britain.

(*b*) A business, or property of which the transfer is incidental to the transfer of a business, not being (in either case) a business which substantially consists in holding, managing, developing or dealing in land in Great Britain. This excludes from the section a transfer of business premises along with a business, provided that the business is the main subject of the transaction. If the premises were the principal item, their transfer could hardly be regarded as "incidental." The fact that the company carries on a business does not in itself involve any exemption.

(*c*) Property which is deemed to pass by virtue of s. 35 of the Act (discussed below), or any interest in such property. Subject to this exception, s. 34 may apply to cases where the deceased had and/or transferred a limited interest only, as well as to cases where he was originally the absolute owner, and transferred the property absolutely.

(*d*) Patents or copyrights. As will appear later, royalties are similarly excepted from the category of *benefits*. In the absence of any special provision, the section might easily have applied in a case where an inventor or author transferred his rights to a company on a royalty basis, purely as a matter of business.

(*e*) Moveable tangible property other than money or securities. This seems to be equivalent to *goods* as defined in the Sale of Goods Act, 1893, s. 62. It makes no difference that the company may take the property with a view to selling.

The *value* of the property transferred is not material in the first instance. Subject to the *de minimis* rule, even a trifling transfer may bring the section into

operation. But, as will appear later, the value of the property limits the amount upon which Estate Duty is ultimately leviable.

The *benefit* required by the section must be received by the deceased out of the resources or at the expense of the company, either directly or indirectly. Such benefit, as further defined by sub-s. (2), may consist of—

(*a*) Any payment made, *whether for consideration or not,* to or for the benefit of the deceased, other than—

(i) Dividends on shares in the company.

(ii) Interest on and repayments in respect of money lent to the company.

(iii) Payments of or on account of purchase money under a *bonâ fide* sale, where that purchase money is a capital sum of fixed amount.

(iv) Payments of or on account of royalties, not being royalties limited to cease on the death of the deceased.

(*b*) Any right in or enjoyment of any land.

Among the "benefits" coming within description (*a*) are a salary (even if it is *bonâ fide* earned), a loan to the deceased by the company, and a rack rent for premises let by the deceased to the company.

Exception (ii) would cover debentures. In view of the previous reference to patents and copyrights, and also of the fact that rent *is* a benefit, it is thought that *royalties* in exception (iv) means only royalties in respect of patents and copyrights and *not* mineral royalties. The land mentioned at (*b*) need not necessarily be in Great Britain (but *see* p. 60). Enjoyment of chattels is not treated as a benefit.

The benefit need not be enforceable or received as of right. It is sufficient that the deceased in fact received or enjoyed it. There is no requirement that the benefit shall be received after the transfer to the company.

The *prescribed period*, within which the benefit must be received, is defined by sub-s. (6) as the three years ending on the closing date of the last accounting year preceding the death—or such part of those three years as the company has been in existence. Where the company has made up accounts for a period of twelve months ending on a date within twelve months of the death, an *accounting year* is the twelve months covered by such accounts, or the twelve months ending on the same date in any previous year. That is to say, if a company made up accounts as at the 31st March annually until 1928, and then, changing its practice, made up accounts for the nine months ending on the 31st December, 1928, and for the twelve months ending on the 31st December, 1929, and the deceased died on the 1st October, 1930, the accounting years would be the calendar years 1929, 1928, 1927, etc., although they would not coincide with the periods covered by the earlier accounts. In any other case, *i.e.*, if the company has not made up accounts as mentioned, an *accounting year* is the twelve months ending on such date within twelve months of the death as the Commissioners may determine, or the twelve months ending on the same date in any previous year. In a normal case, where the company has made up regular annual accounts, the expression *accounting year* will bear its primary meaning, and the *prescribed period* will be simply the last three completed accounting years before the death.

Finally, the *average of the proportions*, borne by the *total value of the benefits* to the *total income of the company* in each of the accounting years falling wholly or partly within the prescribed period, must exceed 50 per cent. (sub-s. (1)).

The value of benefits is dealt with in sub-s. (3). If the benefit consists of a payment, deduction is to be made for any Income Tax (but not Sur Tax) paid or borne

by the deceased in respect thereof. The payment, of course, may not have been taxable in the hands of the deceased, as where it was a gratuity or a loan. In the case of a benefit consisting of a right in or enjoyment of land, the value is to be computed by reference to the annual value of the land for purposes of Income Tax, due allowance being made for any rent *paid* (not *payable*) by the deceased. There is no allowance for Income Tax paid or borne by the deceased in respect of land. In view of the reference to the Income Tax value, land outside Great Britain and Northern Ireland, not being let at a rent, could not normally be taken into account as a benefit. Benefits should apparently be attributed to the year of actual receipt or enjoyment, without regard to the period in respect of which they were paid or accorded. For example, if the accounting year was the calendar year 1929, and the deceased on the 1st January, 1930, was paid a year's salary for 1929, the benefit should be attributed not to 1929 but to 1930.

In ascertaining the *total income of the company* for any accounting year (sub-s. (4)), the income from any source is to be computed in accordance with the Income Tax Acts relating to the computation of income from such a source, but by reference to the actual income for the accounting year and not for any other period. No deduction is to be made for any payment to or for the benefit of, or for any other benefit accorded to the deceased, except dividends on preference shares and interest on money lent to the company. A preference share means a share carrying a dividend at a fixed rate only—excluding a participating preference share (s. 38 of the 1930 Act). Interest on money lent would include debenture interest. Subject to the provision against deduction for payments and benefits to the deceased, deduction is to be made for—

(*a*) Income Tax paid or borne by the company.

(*b*) Interest on money lent to the company.
(*c*) Dividends on preference shares.
(*d*) Rents, royalties and other payments by the company on which Income Tax is deducted at source.

The provision *for* deduction being subject to the previous provision *against* deduction, there is *no* deduction for rents and royalties paid to the deceased (although the latter are specially excluded from the category of *benefits* which attract liability to duty).

The computation by reference to the *source* of the company's income precludes any deduction, against the annual value of land or dividends or interest received by the company, on account of management expenses. Income outside the scope of the Income Tax Acts must presumably be disregarded; this may apply, as in the case of benefits, to land outside Great Britain and Northern Ireland. A consequence of computation by reference solely to the particular accounting year is that a loss cannot be carried forward.

Apart from the non-deduction of payments and benefits to the deceased, the total income of the company is, in effect, the amount of the Income Tax computation, so far as attributable to ordinary and deferred shares.

In view of the relation between the definitions of an accounting year and of the prescribed period, it seems that a year will fall *partly* within the period only where the company has been in existence for less than three years before the end of the last accounting year. In this case and other cases where the accounting years do not coincide with the periods for which accounts have been made up, the Commissioners are empowered by s. 34 (5), for the purpose of ascertaining the total income of the company for any accounting year, to

divide any of the said periods, and to make such apportionments and aggregations of the income of the company as may be necessary, the apportionments being made in proportion to the number of months or fractions of months in the respective periods for which apportionment is made.

When the value of the benefits and the total income of the company in each of the years have been ascertained, the *proportion* for each year has to be calculated separately, and then the *average of the proportions* has to be calculated (sub-s. (1)). The result may differ considerably from the proportion borne by the aggregate benefits to the aggregate income, for the three years as a whole. For example, if the benefits were £4,500, £3,750 and £4,500 and the company's income was £10,000, £6,000 and £10,000, the separate proportions are 45 per cent., 62.5 per cent. and 45 per cent., and the average of the proportions is 50.83̇ per cent. The section would therefore apply, although for the period as a whole and also for two of the years separately the benefits were less than 50 per cent. of the company's income. Conversely, if the benefits were £5,500, £2,250 and £5,500, and the company's income £10,000, £6,000 and £10,000 as before, the separate proportions are 55 per cent., 37.5 per cent. and 55 per cent. and the average of the proportions is 49.16̇ per cent. The section would therefore not apply, although for the period as a whole and also for two of the years separately the benefits were more than 50 per cent. of the company's income.

The section makes no express provision for the possibility that the value of the benefits and/or the income of the company in a particular year may be nil. If each is nil, it can hardly be said that any proportion exists, and the year must presumably be disregarded. In a year when there is no benefit, but the income of the

company is £*x*, the proportion, on the percentage basis which the section prescribes, is 0 per cent.—not *infinitely small*. If, therefore, the proportion of benefits to income in any year within the prescribed period exceeds 150 per cent., the average of the proportions will necessarily exceed 50 per cent. and Estate Duty will be payable, even if the deceased received no benefits in the other years. If the value of the benefits is £*x* in a year when the income of the company is nil, the proportion for that year, still on the percentage basis, is *infinitely great*, and (even if in the other years there were no benefits but the income of the company was substantial) the average of the proportions will also be infinitely great, so that in every such case Estate Duty will be payable to the maximum extent which is possible under the section.

If the four conditions enumerated on p. 55 are all fulfilled, there is deemed to pass on the death for the purposes of Estate Duty (over and above any other property passing or deemed to pass) a notional sum of money which bears to the *value of the total assets of the company* the proportion computed for the purpose of the last condition, *i.e.*, the average of the proportions for the separate years. In effect, the duty is levied on a "slice" of the company's capital, proportionate to the income which the deceased enjoyed.

The value of the total assets of the company (defined by s. 38 of the 1930 Act) means the principal value, ascertained in accordance with the F. A. 1894, s. 7 (5), of all the assets of the company as a going concern, including goodwill, after deducting therefrom—

(*a*) The par or redemption value, whichever is greater, of any debentures, debenture stock and preference shares of the company.

(*b*) All debts of the company incurred or created *bonâ fide* for consideration in money or money's

worth. There is no restriction on the deduction of debts owing to the deceased, but such debts would, of course, be assets in his free estate.

(*c*) A sum which represents on a just and fair computation any future or contingent liabilities of the company or any liabilities which are uncertain in amount.

(*d*) Any reserve fund separately invested and *bonâ fide* intended to be applied solely in payment of pensions to employees or otherwise for the benefit of employees or their dependents or relatives.

The reference to a sale as a going concern is presumably intended merely to preserve any special value attaching to the assets in this form, and not to require that they must necessarily be sold in this form if they would fetch better prices separately (*see* p. 133, *infra*).

The notional sum which is deemed to pass is not in any event to exceed either—

(*a*) the value of the total assets of the company, *or*

(*b*) the principal value at the date of death of the subject of the transfer by the deceased to the company (whether still in the hands of the company or not), *or*

(*c*) if the subject of the transfer has been sold or exchanged by the company, the principal value at the date of death of (either the subject of the transfer or) the property in the hands of the company which is or represents the proceeds of sale or exchange.

The limit (*a*) provides for the possibility that the average of the proportions might exceed 100 per cent. The limits (*b*) and (*c*) are prescribed by proviso (*a*) to s. 34 (1), which takes the form of reducing the notional sum by the amount, if any, by which the value of the subject of transfer, or of the proceeds or substituted

property, is shown to the satisfaction of the Commissioners to fall short of the notional sum. In the case of a sale or exchange, if the proceeds can be earmarked, the company can put forward, as a limit to the amount of the notional sum, the value of either the original property or the proceeds or substituted property, whichever is the smaller. Apart from this proviso a heavy liability might conceivably be incurred by reason of some small transfer by a director (perhaps to make amends for an error of judgment on his part), where the "benefits" which he received were attributable solely to his earning capacity and had no connection with the transfer.

If the total assets of the company include any property deemed to pass by virtue of s. 35 of the Act, the value of that property (as ascertained for the purposes of s. 35) is to be deducted from the value of the assets, and so much of the total income of the company as is ascribable to that property (or to any other property which it represents) is to be deducted both from the total income of the company and from the total value of the benefits in any accounting year (s. 34 (1) (*c*)). For example, *X* owned property of the capital value of £100,000 producing £5,000 per annum net, and was life tenant of property of the capital value of £200,000 producing £9,000 per annum net. Both properties were transferred to a company, having its whole capital in ordinary shares and being concerned solely with the properties in question. *X* in each year received £12,000 as governing director. On the death of *X*, Estate Duty is payable under s. 35 on property to the value of £200,000, which may be either the original property of which he was life tenant or new investments representing that property. In these circumstances, for the purposes of s. 34, the value of the total assets is £100,000, the benefits are £3,000 per annum (£12,000 less

£9,000) and the company's yearly income is £5,000 (£14,000 less £9,000). Estate Duty is accordingly payable under s. 34 on a sum equal to $\frac{3000}{5000}$ of £100,000, viz., on £60,000. It is assumed that the value and yield of the properties have remained constant. In effect s. 35 takes priority over s. 34.

Except as stated above, there is no provision for the exclusion of any kind of property from the category of assets. Patents and copyrights, for instance, although disregarded as the subject of a transfer to the company, must now be brought into account. So also must property which would itself be exempt, such as immoveable property outside Great Britain or notable works of art, for the duty is levied on a notional sum, not on the assets themselves.

It is expressly provided by s. 34 (1) (*b*) that, notwithstanding anything in the section, the value of any property or interest in property is not to be taken into account directly or indirectly, for the purpose of assessment of Estate Duty, more than once on the same death. The F. A. 1894, s. 7 (10), guards against a double levy of duty on the same property, but it would not prevent the Revenue from claiming, in the case of a transfer within three years of the death, Estate Duty both on the actual property transferred, as a gift *inter vivos,* and also on a notional sum based on that transfer. The present provision would cover such a case, and in the particular circumstances Estate Duty would probably be claimed on the gift only. Notwithstanding the provision, it would seem that the same property *is* taken into account more than once where shares in the company pass on the same death which attracts Estate Duty on a notional sum. Such shares, not being preference shares, fall to be valued with reference to the value of the total assets of the company, after subtracting therefrom the notional sum (s. 37 (1); pp. 135–138, *infra*).

This contemplates two assessments, on the notional sum and on the shares; and, although the latter assessment specifically excludes the amount of the former, it would still appear that the same property, viz., the assets of the company, is in fact "taken into account" in each case. To this extent the express and particular terms of the proviso to s. 37 (1) must be assumed, so far as there is any inconsistency, to prevail over the more general terms of the proviso under discussion (s. 34 (1) (*b*)).

Finally, the notional sum which is deemed to pass is to be an estate by itself and not aggregable with any other property (s. 34 (7)). This would apparently be the case, apart from any special provision, on the ground that the notional sum is property in which the deceased never had an interest (F. A. 1894, s. 4). The sum is personal property so that interest will be payable on the duty as from the date of death.

The example given on p. 54 will now serve to illustrate the general working of s. 34. *A* dies on the 1st October, 1930, being more than three years after the transfer to the company. His benefits throughout were as originally fixed. The company in the meantime had raised loans amounting to £40,000 for improvements and further purchases. During the last three accounting years, being the calendar years 1927, 1928 and 1929, the *gross* income of the company as computed for Income Tax (consisting of the assessments on its lands, including the mansion house, and the gross dividends on its holdings of stocks and shares) was respectively £15,750, £12,000 and £13,875. The £100 per annum rent paid by the deceased is covered by the assessment on the mansion house, and need not be brought into account as income again. Loan interest amounting to £2,000 gross and preference dividends amounting to £2,500 gross were paid in each year. The rate of

Income Tax was 4s. in the £ throughout. The total value of the benefits in each year was:—

	£	£
Salary	5,000	
Less Income Tax thereon (with Earned Income Allowance) ...	950	
	—	4,050
Mansion house	550	
Less rent	100	
	—	450
		£4,500
The total income of the company for 1927 was		15,750
Less Income Tax paid or borne ...	3,150	
Loan interest £2,000		
Less Income Tax thereon (included in the £3,150) 400		
	— 1,600	
Preference dividends ... 2,500		
Less Income Tax thereon (also included in the £3,150) 500		
	— 2,000	
	——	6,750
		£9,000

The total income of the company for 1928 and 1929, similarly calculated, was £6,000 and £7,500.

The proportions borne by the benefits to the company's income in the respective years was therefore £4,500/£9,000=50 per cent., £4,500/£6,000=75 per cent. and £4,500/£7,500=60 per cent. The average of these proportions is 61.6 per cent.

The gross assets of the company consist of lands and investments, the principal value of which, at the date of death, was (say)		£250,000
Deduct the loans	£40,000	
and the par value of the preference shares	50,000	
		90,000
The value of the total assets of the company is then		£160,000

Estate Duty is ultimately payable by the company on a sum equal to 61.6̇ per cent. of £160,000, viz., on £98,666 13s. 4d. This is an estate by itself and the appropriate rate of duty is 19 per cent.

If the 50,000 ordinary shares, which were originally allotted to the deceased, pass on his death, whether as part of the free estate or otherwise, their value for Estate Duty will be ascertained, as already mentioned, by reference to the value of the

total assets	£160,000	0s.	0d.
After deducting the notional sum ...	98,666	13s.	4d.
	£61,333	6s.	8d.

As there are 150,000 ordinary shares altogether, the statutory value will be slightly over 8s. 2d. per share. This is obviously less than the intrinsic value and probably less than the market value, but the deduction of the notional sum is intended, not to arrive at a true value, but to avoid double taxation.

Property in which the Deceased had a Life Interest.

The F. A. 1930, s. 35, deals with cases where the interests of a tenant for life and remainderman are both transferred to a company, so that the property does not pass on the life tenant's death, and the Estate

Duty presumptively payable under the settlement is avoided. The release of the life interest to or for the benefit of the remainderman himself was already the subject of stringent provisions, liability being avoided only if the life tenant relinquished all interest in the property and all collateral benefits at least three years before his death (pp. 48–52). Those provisions, however, are not applicable to a transfer of both interests to a third party; and it was found to be possible, by transferring the whole property to a company, to secure to the life tenant an income equivalent to his original interest, without incurring any liability on his death.

The following is an example of the type of case to which s. 35 relates.—An estate, including a mansion house, and capital moneys are settled on *A* for life with remainder to *B*. *A* and *B* form a company to which they sell their respective interests. *A* gets from the company a life annuity more or less equal to the income of the property, while the mansion house is let to him at a nominal rent. *B* and his nominees get the whole of the shares in the company. Apart from the F. A. 1930, no Estate Duty would be payable on *A's* death. There was no release to or for the benefit of *B*, and the annuity and tenancy are a matter of purchase for full value between *A* and the company, so that no duty is attracted by the cesser. In such a case the original property, or any substituted property, is now deemed to pass on the death of *A*, as if his estate or interest had continued until his death.

The transaction may take any of a variety of forms; for instance, the life tenant may get his benefit in the shape of shares in the company or of a salary as governing director.

The transfer to a company of a life interest only is not touched by the section. The property in that case

passes in due course from the company to the remainderman, and the interests of the Revenue are not affected.

To attract Estate Duty under s. 35, eight conditions must be fulfilled—

(1) The death occurs on or after the 1st August, 1930.

(2) The deceased had at any time an estate or interest in any property limited to cease at his death. This is narrower than the provisions regarding a release to the remainderman, which apply where the deceased *or any other person* had an interest limited to cease at the death of the deceased. But it is not necessary that the deceased shall still have a life interest at the time of the transfer.

(3) The property was transferred by the deceased and the person interested in the remainder or reversion, whether directly or indirectly, and whether by one or more transactions, to or for the benefit of a company. The words "directly or indirectly" would cover a case where the life tenant, by arrangement, first purchased the reversion and then transferred the entire property to the company, or a case where either the separate interests or the entire property are transferred to the company through the medium of a nominee. If the remainderman first acquired the life interest, duty would normally be payable under the older provisions as to releases. If the company acquires the property as a whole, the section will apply only if there was some measure of concert or arrangement between tenant for life and remainderman; otherwise the property cannot be said to have been transferred *by them* to the company, even

indirectly. But if the company acquires the respective interests separately, it will make no difference whether there was or was not any concert or arrangement.

As the Finance Acts are concerned only with beneficial interests, it is immaterial by what means the legal estate in, or ownership of, the property is assured to the company, or whether it is left outstanding.

(4) The company must be one to which the Act applies (defined on p. 53).

(5) The transfer must be made after the 31st July, 1918. There is no express provision for the possibility of a transfer of the property by two (or more) transactions, one before and one after 1918; but, as the section contemplates a complete transfer, the Revenue would apparently be justified in claiming that the test is the date of the *final* transaction.

(6) If the property was settled property, and the interest of the deceased would in any event have failed by reason of his death before it would have become an interest in possession, s. 35 does not apply. This provides for cases where a *reversionary* life interest is transferred to the company, and prevents Estate Duty from becoming payable where it would not have been payable apart from the transfer. In effect, it incorporates the exemption conferred by the F. A. 1894, s. 5 (3), discussed on pp. 252–255, *infra*. The special provision hardly seems to be necessary, for in any event the property is deemed to pass under s. 35 of the 1930 Act only "in *like manner* as if the estate or interest of the deceased therein had continued until the death," so that in appropriate circumstances

the old exemption under s. 5 (3) would have been available.

(7) Section 35 does not apply where the share of the consideration for the transfer, payable to the deceased, was satisfied otherwise than by—

(*a*) an allotment of shares in the company, or

(*b*) the grant to the deceased by the company of an annuity or other right to receive periodical payments, not being payments on account of purchase money, such purchase money being a capital sum of fixed amount.

"Satisfied" means *fully* discharged, so that if any *part* of the deceased's consideration falls in category (*a*) or (*b*) the section will apply. On this point, *see also* p. 75, paragraph (2). As to the meaning of "shares," *see* s. 38 of the Act (p. 135, *infra*). For the present purpose the shares may be preference shares or otherwise. "Periodical payment" would include a salary or rent. It need not be a payment ceasing on the death.

(8) Section 35 does not apply where the deceased—

(*a*) had at least three years before his death relinquished all interest in the property, and

(*b*) had not at any time within those three years the possession or enjoyment (otherwise than under a lease or agreement for a lease at a rack rent) of any part of the property or of any benefit secured to him, whether by contract or otherwise, in relation to the relinquishment of his interest in the property, and

(*c*) was not at any time within those three years in receipt of or entitled to any payment from the company, otherwise than in respect of or on account of debentures or loans or purchase money being a capital sum of fixed amount.

Paragraphs (*a*) and (*b*) follow substantially the same lines as the rules relating to gifts and releases "with reservation" (pp. 40–42). For the purpose of paragraph (*a*), the deceased may have received a payment, such as an honorarium or loan, without having been entitled to it. Similarly, he may have been entitled to a payment, such as a director's salary, which he waived and did not receive. Subject to the other conditions, Estate Duty is payable in either case. Dividends on preference or ordinary shares are also payments within the meaning of paragraph (*c*). It is immaterial for the purpose of any part of condition (8), how small the interest of the deceased, or the benefit or payment to him, may have been.

Where the original property or any part thereof has been *bonâ fide* sold or exchanged by the company during the deceased's life for full consideration in money or money's worth, the property or so much thereof as has been so sold or exchanged is not deemed to pass on the death, but the proceeds of sale or exchange, or the property which at the time of death represents those proceeds, is deemed to pass instead. If the company has disposed of the original property in any other manner, it will still be deemed to pass, and, while the company will still be accountable, the duty (*primâ facie*) will also be a charge on the property in the hands of the transferee.

In determining the value of the property deemed to pass under s. 35, deduction is allowed (by sub-s. (2)) for—

(1) Any sum of money (*a*) borrowed by the company and (*b*) applied by the company in the improvement of the property, (*c*) so far as it has not at the date of death been repaid by the company. The allowance covers only *outstanding loans*. There is no deduction for the cost of

improvements effected out of the company's own resources, or for loans which have been paid off, or for *debts* in respect of improvements, not being actually loans.

(2) Any capital sum of money which was paid to the deceased as part of the consideration for the transfer. This is a safeguard against double taxation, for the capital sum would normally be represented in the value of the deceased's free estate. The provision serves incidentally to confirm that s. 35 applies where part only of the consideration is satisfied in any of the modes mentioned in condition (7) above.

(3) Where Estate Duty is payable in connection with the death on any shares in or debentures of the company, a sum equal to the principal value of any such shares or debentures as were transferred or allotted to the deceased in consideration of the transfer of the property. This, again, is a provision against double taxation, but there is no allowance in respect of any shares or debentures which may pass on the death, but which were not part of the deceased's original share of the consideration, *e.g.*, shares which he bought or inherited after the transfer. On the other hand, it is not necessary that the shares or debentures, in respect of which deduction is to be taken, shall then form part of the deceased's free estate; it is sufficient if they are liable to Estate Duty under any title.

The property ultimately chargeable under s. 35 is to be an estate by itself, and not to be aggregated with any other property (sub-s. (3)). There is, however, no concession with regard to the rate of Estate Duty on

the ground that the company may have *bonâ fide* purchased an interest in expectancy before the date of the Act; cases falling within s. 35 are specially excluded from the benefit of the usual proviso in favour of such purchasers contained in s. 33, which introduces the revised scale. Even if the transactions took place before the F. A. 1919 or F. A. 1925, the 1930 scale will still apply, for the benefit of the similar provisos in the earlier Acts depends upon the proviso being repeated each time the scale is altered.

Enforcement of Liability.

The recovery of Estate Duty leviable against a company under the F. A. 1930, s. 34 or s. 35, is regulated by s. 36. The duty is a Crown debt due from the company, which is accountable therefor.

For the purpose of raising and paying the duty, the company has all the powers conferred on accountable persons by the F. A. 1894 (pp. 201–202, *infra*). The powers are hardly appropriate to cases falling under s. 34, and in any event do not seem likely to be required.

The ultimate burden of the duty falls on the company itself. There is no right to reimbursement from the free estate, shareholders, remainderman or otherwise. If the duty or any part thereof is paid by the executor of the deceased, it is to be repaid to him by the company.

The company concerned is required to notify the Commissioners of any death which gives rise to a claim for duty under s. 34 or s. 35, and in case of wilful failure is liable to a penalty not exceeding £500.

The Commissioners, for the purpose of carrying ss. 34 and 35, and also s. 37, into effect, are empowered by s. 36 (4) to require any company to which the Act applies (defined on p. 52) to furnish within two months copies of such of the balance sheets and profit and loss

or income and expenditure accounts, and such other particulars, as the Commissioners may reasonably require. Failing compliance, the company is liable to a penalty not exceeding £500, and every director, manager, secretary or other officer of the company who knowingly and wilfully authorises or permits the failure is liable to the like penalty. In addition, an order may be made against all or any of the directors, to comply with the requirements of the Commissioners, in the same manner as an order for delivery of a Legacy Duty or Succession Duty account; and the Crown Suits, &c., Act, 1865, s. 55 (in England), and the S. D. A. 1853, s. 47 (in Scotland), are to apply accordingly, subject to the necessary modifications. It will be observed that s. 36 (4) of the 1930 Act enables the Commissioners to call for accounts, etc., in any case where they have reason to suppose that duty may be payable under s. 34 or s. 35, and also where shares in the company may fall to be valued under s. 37—not only where the company is in fact accountable for duty.

Apart from the liability of the company, the duty in cases falling under s. 35 will be a charge on the property which is deemed to pass (F. A. 1894, s. 9 (1)).

I.—Joint Property.

The distinguishing feature of an English joint tenancy is that upon the death of one joint tenant the entirety of the property vests automatically in the survivors or survivor. As it happens frequently that the legal and the beneficial ownership of property do not coincide, it should be observed that only the cases where the beneficial interest devolves by survivorship are dealt with here. The legal ownership is immaterial in relation to the death duties; it may, for example, be vested in trustees and be unaltered by the death. On the other hand, a beneficial share of any property, which devolves

not by survivorship but to the representatives (as such) of the deceased owner is, of course, part of his free estate.

In a true joint tenancy the interests of the joint tenants must be equal and identical in every respect. Any one of them can in his lifetime acquire full dominion over his share by severing the joint tenancy or he can dispose of it as he thinks fit, in which event the joint tenancy will, so far as his share is concerned, be severed by that disposition. The unsevered share of a deceased joint tenant, although it accrues to the other joint tenants by survivorship, is in consequence property of which he was competent to dispose and liable to Estate Duty as such (F. A. 1894, s. 2 (1) (*a*)).

But the liability to duty may extend further, for where the deceased, having been absolutely entitled to property, has caused it to be transferred to or vested in himself and any other person jointly, or where, having been absolutely entitled to property, he has effected with it a purchase or investment in the joint names of himself and any other person, either by himself alone or in conjunction or by arrangement with any other person, so that on his death the beneficial interest therein or in some part thereof accrues by survivorship to such other person, the whole property is deemed to pass on the death of the deceased for the purpose of attracting Estate Duty (F. A. 1894, s. 2 (1) (*c*), incorporating Customs and Inland Revenue Act, 1881, s. 38, as amended by Customs and Inland Revenue Act, 1889, s. 11). If the deceased provided the property originally, it is sufficient to attract Estate Duty in respect of the *whole,* that the beneficial interest in a *part* shall have passed or accrued on the death.

The last rule is not fully applied. Where more than three years have elapsed since the purchase or transfer, and it is clearly established that during the joint lives the survivor, in the case of land, was entitled to a

severed share of the income, or, in the case of pure personalty, was entitled to *and in fact received* a severed share of income, Estate Duty is claimed only on the share in which the deceased was interested beneficially. The practice in this respect, though uniformly followed, appears to be a matter of concession.

The distinction between land (including leaseholds) and other property rests on s. 53 of the L. P. A. 1925, replacing ss. 7, 8 and 9 of the Statute of Frauds, which prevents the creation of any trust of land except by writing, but does not affect resulting, implied or constructive trusts. Unless otherwise provided in writing, therefore, joint tenants of land must apparently be either trustees for the transferor or purchaser absolutely, or beneficial joint owners with equal rights in every respect. In the case of pure personalty, however, parol trusts are permitted, so that the beneficial interests may take almost any form; but, even where the purchaser or transferor intends to confer a benefit, the *presumption* is that he is to enjoy the whole income during the joint lives, the other party being given only a contingent right to the capital in the event of his surviving the "donor" (*Fowkes* v. *Pascoe* (1875), L. R. 10 Ch. App. 343; *re Eykyn's Trusts* (1877), 6 Ch. D. 115). In these circumstances, the claim for Estate Duty on the "donor's" death, which extends in strictness to the whole of the property, however the income was dealt with, is limited only on proof that the survivor actually enjoyed a severed share of income as of right and independently of the deceased. A mere parol agreement that the survivor should be *entitled* to such a share, or the payment of the income into a joint bank account, or its use for joint living expenses, will not suffice to gain the concession.

In a case where the concession would be refused on the death of the "donor," no duty is claimed on the

death of the other party in his lifetime. The contingent right of the latter to the *corpus*, in the event of his being the survivor, is treated as an interest which failed before it became an interest in possession (F. A. 1894, s. 5 (3)).

In practice it is necessary to ascertain in all cases the source of the property, the relationship of the parties, and the evidence (if any) which may rebut or support the presumption of advancement which arises where a man makes a purchase in or transfer into the joint names of himself and his wife or child or a person to whom he stands *in loco parentis*, or the presumption of resulting trust in favour of the purchaser or transferor which arises in all other cases. Where property or purchase money is claimed to have been provided by a married woman, the Revenue usually requires to be satisfied that it was in fact her separate estate. If the property is pure personalty, it may be necessary, in addition, to ascertain how the income was dealt with during the joint lives.

The following table illustrates the effect of the rules and the concession in a case where property is held in the joint names of a husband and wife. It is assumed that the property has been so held for at least three years, that the other spouse survives, and that no other material facts are known.

Land (including leaseholds).

Purchased or provided by husband—

On death of husband: Estate Duty on a moiety only (by concession).

On death of wife: Estate Duty on a moiety (there being an immediate gift in her favour: *Dunbar* v. *Dunbar*, [1909] 2 Ch. 639).

Purchased or provided by wife—

On death of husband: no claim (he being merely a trustee for the wife).

On death of wife: Estate Duty on the whole (the property being her free estate under a resulting trust).

Other Property.

Purchased or provided by husband—

On death of husband: Estate Duty on the whole (no concession).

On death of wife: no claim (F. A. 1894, s. 5 (3)).

Purchased or provided by wife—

On death of husband: no claim (he being merely a trustee for the wife).

On death of wife: Estate Duty on the whole (the property being her free estate under a resulting trust).

In cases where the joint tenants have contributed the purchase money for their property in unequal shares, s. 2 (1) (*c*) is applicable, in the manner explained above, to so much of the property as was purchased or provided by the deceased. For example, where *A* and his son *B* invest in stocks and shares in their joint names £1,000, of which *A* finds £700 and *B* £300, and on the death of *A*, who dies first, the investments are worth £1,200, Estate Duty is payable on $\frac{700}{1000}$ of £1,200 = £840, that being the proportion attributable to *A's* money. If, instead of *A*, *B* had died, duty would have been payable on $\frac{300}{1000}$ of £1,200 = £360 (but *primâ facie* this share would have been part of his free estate under a resulting trust). Where the share of which the deceased was competent to dispose is greater than the share which he provided, duty is payable on the former. If the £1,000 above had been used to purchase land, and *B* had died first, the liability to duty would have extended to his severable half-share.

Where property is held jointly, whether in true joint tenancy or not, it may happen that Estate Duty is

chargeable on a share thereof either on the ground that the deceased was competent to dispose of it or under s. 2 (1) (*c*) of the F. A. 1894, and on a further share as the subject of a gift *inter vivos*. An obvious example is the purchase of land by a father in the joint names of himself and his child. On the death of the former within three years of the purchase, duty is of course payable in respect of the entirety. In such cases the whole is treated as joint property in connection with the option to treat joint property as "settled" for purposes of aggregation (*see* p. 127) and no distinction is either made or allowed in this respect between the two moieties.

J.—Policies and Interests Provided by the Deceased.

Estate Duty is payable in respect of—

(*a*) money received under a policy of assurance, effected by the deceased on his life, and wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money, in proportion to the premiums paid by him, where the policy is partly kept up by him for such benefit (F. A. 1894, s. 2 (1) (*c*), incorporating Customs and Inland Revenue Act, 1889, s. 11 (1)), and

(*b*) any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising on the death of the deceased (F. A. 1894, s. 2 (1) (*d*)).

The expression "other interest" includes policy moneys (*A.-G.* v. *Dobree,* [1900] 1 Q. B. 442). In some of the most usual cases falling under this head the liability to duty arises under *both* charging provisions: for example (1) where the deceased effects a policy on

his life (under the Married Women's Property Act, 1882, the Married Women's Policies of Assurance (Scotland) Act, 1880, or otherwise), for the express benefit of his wife or children, and pays all the premiums, or (2) where the deceased settles a policy which he has effected on his life, and pays the subsequent premiums. But there are important differences between the provisions.

For the purposes both of s. 2 (1) (*c*) and of s. 2 (1) (*d*) it is immaterial whether the deceased entered into any covenant or engagement to pay the premiums or otherwise provide the benefit. It is sufficient that he does so in fact.

A general provision, often affecting property taxable under this head, is the exclusion from aggregation of property in which the deceased never had an interest (F. A. 1894, s. 4; p. 123, *infra*). Any such property forms an "estate by itself" for the purpose of determining the rate of Estate Duty. The provision does not apply (*inter alia*) to moneys payable (*a*) under a policy which belonged to the deceased before he assigned or settled it, or (*b*) under a nomination policy where the interest of the nominee was contingent on his surviving the deceased, so that the deceased had a contingent interest in default of such survival (*A.-G.* v. *Pearson*, [1924] 2 K. B. 375). When a policy is effected under one of the Married Women's Property Acts for the benefit of "the wife of the assured" (without naming her), the trust enures only for the benefit of a wife who survives the assured (*re Collier*, [1930] 2 Ch. 37, and cases there cited). In such circumstances, therefore, the policy moneys are always aggregable.

It is necessary in dealing with cases under this heading to consider whether the nominee or assignee is in fact entitled to the policy money or other property beneficially or whether there is a resulting trust under which

the asset forms part of the free estate. Again, an "education policy" or "endowment policy," effected by a parent on the life of his child and intended for the child's benefit, is *primâ facie* the property of the parent and liable to Estate Duty on the parent's death as part of his estate (*re Engelbach, Tibbetts* v. *Engelbach,* [1924] 2 Ch. 348).

It should be noted that in general the policy moneys and other benefits under discussion are chargeable, subject to any express exemption, with Succession Duty. That duty may, moreover, be payable, with the additional percentage imposed by the Customs and Inland Revenue Act, 1888, in cases where Estate Duty is not leviable, *e.g.,* where a policy on the life of the deceased is kept up for a beneficiary by a third person (*see* pp. 420–421). No Estate Duty or Succession Duty is chargeable in the case of a policy on the life of the deceased which is effected and kept up by another person for his own benefit.

Policies "kept up" for Donees.

Section 2 (1) (*c*) applies only to a policy effected by the deceased on his life. A policy is considered to be *effected* by the person who provides the first premium, notwithstanding that a nominee may have signed the proposal form and be named in the policy as proposer, for regard must be had to the substance of the transaction.

Within its restricted range, s. 2 (1) (*c*) imposes duty in cases which would escape s. 2 (1) (*d*), viz., where some only of the premiums are paid by the deceased. For instance, *A* effects a policy on his life for the benefit of his wife and pays five premiums. Thereafter the wife pays the premiums, say ten in number, out of her separate estate. Estate Duty is not chargeable on *A's* death under s. 2 (1) (*d*), but is payable under s. 2 (1) (*c*)

in respect of $\frac{5}{15}$, or one-third, of the amount receivable under the policy.

In the case of a policy which is originally the property of the deceased and is subsequently assigned by him, there can be no *keeping up for the benefit of a donee* until a donee is created. If, therefore, the deceased effects a policy on his life for his own benefit and pays a number of premiums, and then assigns it to his daughter, who pays all further premiums until his death more than three years later, no duty is payable on his death (*Lord Advocate* v. *Fleming or Robertson*, [1897] A. C. 145). The same result would follow (under s. 2 (1) (*c*)) if the policy were fully paid at the time of the assignment. If the deceased pays some but not all of the premiums after the assignment, Estate Duty is chargeable on his death on part of the policy money in the proportion which the premiums paid by the deceased after the assignment bear to the total premiums paid after the assignment. But if the deceased assigned a partly-paid policy on terms that some other person (other than the donee or the beneficiaries under the settlement) should provide, or assist the deceased in providing, for its maintenance, Estate Duty is chargeable on his death in respect of the full amount received, for the benefit is then purchased or provided by the deceased in concert or by arrangement with the other person, within the meaning of s. 2 (1) (*d*). It seems immaterial, for the purposes of this paragraph, whether the premiums *before* the assignment were paid by the deceased or by some other person.

Interests "purchased or provided" by the Deceased.

Section 2 (1) (*d*) extends to "any annuity or other interest." This expression has been held, as already mentioned, to include policy moneys, and it is presumably wide enough to cover any *benefit*, whether in the

form of money, securities, goods, services, land or otherwise, which satisfies the other conditions for liability to duty.

The deceased, either alone or in concert or by arrangement with another person, must *wholly* purchase or provide the benefit. The "concert or arrangement" need not be of a formal or binding nature, but, if there is definitely no concert or arrangement, there is no liability by reason merely that the deceased has contributed towards the provision of a benefit to arise on his death, *e.g.*, by the gift, more than three years before his death, of a partly-paid policy which is subsequently kept up by the donee (*cf. Lord Advocate* v. *Fleming or Robertson, supra,* where the death took place before the F. A. 1894 and the claim for duty rested on the Customs and Inland Revenue Act, 1889, s. 11 (1)). Where transactions have taken place within the three-year period, they may give rise to a charge of Estate Duty even if there is no liability under the present head. Thus if the deceased, less than three years before his death, voluntarily assigned a partly-paid policy on his life, and the donee paid the last premiums, so that the policy moneys were not (completely) purchased or provided by the deceased, Estate Duty is payable *primâ facie* in respect of the *gift*—which must be valued as at the death, with an adjustment on account of the payments made by the donee. So also may premiums paid by the deceased within the period be taxable.

Even if there is concert or arrangement the deceased must contribute towards the purchase or provision in some real sense. It is not sufficient that another person purchases or provides the benefit in concert or by arrangement with the deceased. Where a fully-paid policy on the deceased's life was settled by his marriage settlement, with his approbation, by his father, the Court was "not prepared to hold that on a marriage settlement every-

thing brought into settlement on the husband's side by his father or other relatives can properly be said to be provided by the husband in concert or arrangement with his father or other relatives" (*A.-G.* v. *Murray,* [1904] 1 K. B. 165). And where the deceased settled various policies on his life, and covenanted to pay the premiums, but the premiums were in fact paid from first to last by his wife out of her separate estate under a verbal arrangement, it was again held that Estate Duty was not chargeable (*Richardson* v. *Inland Revenue Commissioners*, [1909] 2 I. R. 597). In an earlier Irish case, where the deceased husband settled policies on his life by his marriage settlement made in 1843, subsequent premiums being provided for out of funds settled by the wife, it was held that there was a provision by the deceased by arrangement with the wife (*A.-G.* (*I.*) v. *Robinson*, [1901] 2 I. R. 67), but this decision has been distinguished (in *Richardson* v. *Inland Revenue Commissioners*, *supra*) on the ground that, if the settlement had not been made, the property settled by the wife would have belonged to the deceased *jure mariti,* and it may be taken not to apply to transactions since the Married Women's Property Acts or between persons other than husband and wife.

In all cases to which s. 2 (1) (*d*) applies, the *whole* of the benefit is chargeable. There is no apportionment or allowance in respect of the contribution of any person with whom the deceased acted in concert.

To constitute a provision by the deceased it is not necessary that he shall have paid directly (for example) the premiums for a policy or the price of a Government annuity. The benefit may be provided indirectly, and the cost need not be ascertainable. Thus the benefit may be secured by partnership articles, under a clause providing for the payment of a capital sum or annuity to the widow or some other nominee of a deceased partner,

or in connection with his retirement from business, on terms that the new or continuing partners shall pay him an annuity for life and then an annuity or capital sum to another person. Where the deceased settles policies on his life and also funds out of the income of which the policies are to be maintained, not only are the policy moneys chargeable as a provision by the deceased, but Estate Duty is also payable in respect of the benefit arising from the cesser of the premiums (*Inland Revenue* v. *Scott's Trustees* (1918), 55 S. L. R. 654).

In the case last cited the trustees had full power to sell or surrender the policies. The decision served, therefore, to confirm the principle that the beneficial interest in *policy moneys* is one which accrues or arises on the death of the deceased, notwithstanding that the beneficiaries had vested interests in the *policy*—or even that it belonged to a donee absolutely—before the death. "The thing subjected to taxation is 'the beneficial interest accruing or arising, by survivorship or otherwise, on the death of the deceased, in any annuity or in any other interest in property purchased or provided by the deceased,' as mentioned in the section. The words 'accruing or arising' are used in contradistinction to 'passing.' They indicate not the transfer upon death to another of something which the deceased or some other person had before or at the death, but the springing up, upon the death, and the then vesting in another, of property which previously had not been existing in anyone. This is an exact description of money secured by a policy of assurance" (*A.-G.* (*I.*) v. *Robinson,* [1901] 2 I. R. 67, adopted by the Court of Appeal in *A.-G.* v. *Murray,* [1904] 1 K. B. 165). No Estate Duty is, however, claimed by the Revenue in cases where the deceased has made an absolute gift of a fully-paid policy on his life more than three years before his death.

If policy moneys are in fact paid over by the insurance company, the liability (if any) to Estate Duty in respect thereof is not affected by reason that the policy may be void as between the company and the person effecting the policy, on the ground that the latter had no insurable interest (*A.-G.* v. *Murray, supra*). The same principle would apply if the policy were impeachable on the ground of error or non-disclosure in the proposal.

Where the benefit in fact accrues by *survivorship* there will usually be an alternative liability in respect of an actual passing or the cesser of the preceding interest, or under the provisions discussed under the heading of Joint Property. If, for instance, the deceased purchased an annuity for the joint lives of himself and his wife and the life of the survivor, and received the whole income during his own life, there would be an actual passing on his death to his wife, if she survived.

The *value* of the property passing in the last example would, of course, be only the value of the annuity for the life of the wife, calculated according to her age at the deceased's death. A benefit arising on the death, if it takes the form of a life annuity or other terminable interest, falls to be valued on similar lines.

Other matters particularly affecting annuities are (1) an exemption in favour of an annuity not exceeding £25 purchased or provided by the deceased (F. A. 1894, s. 15 (1); p. 263, *infra*), and (2) an option to pay the Estate Duty in respect of an annuity, referred to in s. 2 (1) *(d)*, by four equal yearly instalments (F. A. 1896, s. 16; p. 159, *infra*). Both the exemption and the option are available notwithstanding that the duty could be charged on some alternative ground, such as an actual passing of the annuity.

Where the deceased purchases or provides a benefit to arise on his death *out of property which actually*

passes on that event, Estate Duty is not payable directly in respect of the benefit but only in respect of the substantive property. The benefit thus bears Estate Duty by non-deduction, and in these circumstances the last-mentioned exemption and option are not available. For example, Blackacre is settled on *A* for life with remainder to *B*. In consideration of a payment by *A*, *B* agrees to charge Blackacre with an annuity in favour of *A's* wife, to commence on *A's* death. When the death occurs Blackacre passes from *A* to *B* and is chargeable with Estate Duty accordingly. No deduction can be taken in the account in respect of the annuity (*see* p. 177). The annuity, however, is franked by the payment in respect of Blackacre. This principle applies equally to lump sums. In either case the duty is apportionable *primâ facie* between the various persons benefiting on the death.

Though not the subject of any express exemption, widows' pensions payable by the State are not considered to be chargeable with duty, even where the husband was a voluntary contributor. The State is not a person with whom he acted in concert or by arrangement within the meaning of s. 2 (1) (*d*).

Purchase by the Beneficiary.

A general exemption from Estate Duty is conferred in the case of property passing (or deemed to pass) by reason only of a purchase for full consideration in money or money's worth (F. A. 1894, s. 3; pp. 238–240, *infra*). This does not mean that insurance money or any other benefit is exempt on the ground that it was purchased by the deceased from the insurance company or other grantor (*A.-G.* v. *Dobree*, [1900] 1 Q. B. 442). It applies for the present purpose only where the benefit is purchased by the beneficiary, and even in that case it does not apply if the transaction

was in effect a mere change of investment. For example, property was settled on *A* for life with remainder to *B*. *A* and *B* joined in mortgaging the *corpus* of the property, the bulk of the borrowed money being applied for *A's* benefit. As part of the arrangement *A* assigned policies on his life to *B* absolutely, and provision was made for the upkeep of the policies out of *A's* life interest. *A* in fact received a full equivalent for what he gave. There was a condition that, if *B* should surrender any policy, the amount of the relative premiums should continue to be raised and paid to him, and on this ground the House of Lords held not only that the transaction was a purchase but also that the policies were not in fact purchased or provided by the deceased: in substance they were kept up by *B*, for the premium money was at his disposal. No Estate Duty was therefore payable in respect of the policy moneys on *A's* death (*Lethbridge* v. *A.-G.*, [1907] A. C. 19). It was made clear that the policy moneys would not have been exempt, even by reason of the purchase, if *B* had *not* been free to surrender the policies and receive the amount of the premiums. In that event, assuming the sum assured to have been more or less equivalent to the amount raised on mortgage for *A's* benefit, the transaction from *B's* point of view would have been a mere change of investment. He would stand originally to get on *A's* death Blackacre free from incumbrances. In substitution he would succeed to a sum of £*x* under the policies and to Blackacre subject to a mortgage for £*x*. In these circumstances Estate Duty, being payable under the settlement only in respect of the *net* value of Blackacre, is chargeable under s. 2 (1) (*d*) in respect of the policy moneys (*A.-G.* v. *Hawkins*, [1901] 1 K. B. 285).

Where two persons of similar age purchase a survivorship annuity, to be enjoyed by them equally during their

joint lives and then wholly by the survivor, and the purchase money is contributed in equal shares, each annuitant respectively is considered to have provided whatever benefit he or she may take under the contract. No Estate Duty (or Succession Duty) is therefore payable by the survivor on the death of the first to die. If the purchase money is contributed unequally, and the larger contributor is the survivor, the result is the same, *a fortiori*. If the deceased was the larger contributor, and the annuity was enjoyed in proportion to the respective contributions, Estate Duty is payable on so much of the annuity as is attributable to the difference between the contributions: if the annuity was enjoyed equally, duty is considered to be payable only on so much of the annuity as is attributable to a moiety of such difference. A similar exemption applies where two persons of similar age effect a "tontine" policy on their joint lives, for a sum payable on the death of either to the survivor, and the premiums are contributed in equal shares. If there is considerable disparity between the ages of the annuitants or policy-holders, duty may be payable although the contributions were equal.

Provident Funds and Payments by Employers.

Perhaps the commonest example of a benefit purchased or provided by the deceased is a payment by a friendly society or similar institution to the widow or other dependents of a deceased member. More important for the present purpose, because the amounts are usually larger, are the provident funds, pension funds and staff insurance schemes, associated with various forms of employment—notably in the cases of Free Church ministers, banking, insurance and railway staffs, civil servants and local government officers. It is impossible to lay down a definite general rule as to these funds, because the position depends on the rules or terms of

each particular scheme. If the benefit is payable to the legal personal representatives of the deceased, without any express trust, it falls to be treated as part of his free estate. If it is payable otherwise, *e.g.*, to or expressly for the benefit of the widow or children, it is normally chargeable with Estate Duty under s. 2 (1) (*d*). This will be so even if the deceased paid no direct contribution into the fund and no deduction was made from his salary, for the prospective benefit formed part of the consideration for his services, and was thus a provision by him. If the fund is financed or aided by the employer, the provision is usually considered to have been made by the deceased in concert or by arrangement with such employer.

In order to attract duty, however, the benefit must in general be enforceable. No Estate Duty is payable in respect of a mere voluntary *gift* to the deceased's dependents by his employer. This principle applies *inter alia* to civil servants' gratuities, which are matters of grace, but not to teachers' gratuities, which are now payable as of right (*see* p. 262, *infra,* No. 22).

An express exemption is conferred in the case of certain Indian pensions (p. 261, *infra,* No. 19).

On the question of aggregation it will be clear that a pension payable to the widow of the deceased, as such, during her widowhood, is necessarily property in which the deceased never had an interest. But it will often be found that lump sums, even if in the event they are payable to the widow or children as such, would be payable to the legal personal representatives of the deceased if he left no widow or children surviving. Again, the deceased may have had power to nominate. In such cases the deceased has had a contingent interest and the moneys are aggregable.

By way of example, on the death of a bank officer, there may be payable to his widow, out of a provident

fund, a sum of £500 under a nomination by the deceased and an annuity of £150 during widowhood. *Primâ facie* Estate Duty is payable in respect of (*a*) the £500, which must be aggregated with any other aggregable property passing on the death, and (*b*) the £150 annuity, valued according to the widow's age with a reduction for the contingency of re-marriage, as an estate by itself.

No duty is payable in respect of compensation moneys payable under the Employers' Liability Act, 1880, or the Workmen's Compensation Acts. The benefits do not form part of the deceased workman's estate, and they cannot be said to have been purchased or provided by him.

K.—Scottish Entailed Estate.

As this species of property presented special features, the F. A. 1894, in applying the Act to Scotland by s. 23, made special provisions in regard to it. These did not in terms cover the *levy* of Estate Duty, this being unnecessary, inasmuch as entailed property clearly passes on the death of each institute or heir of entail, as "changing hands" on death (*see* Lord Haldane in *Nevill* v. *Inland Revenue Commissioners*, [1924] A. C. 385), and so is dutiable under s. 1 of the Act; but an additional ground of liability arises under the special provision in s. 23 (15) that an institute or heir of entail in possession is, whether *sui juris* or not, to be deemed to be competent to dispose, thus inferring liability also under s. 2 (1) (*a*).

By s. 23 (14) property held under entail is excluded from the category of "settled property" and so from the provisions—whether charging or relieving—enacted as regards settled property. It was, however, provided by s. 23 (16), that where an entailed estate passed on the death of the deceased (thus involving payment of Estate

Duty), to an institute or heir of entail who was not entitled to disentail without consent of subsequent heirs, Settlement Estate Duty should be paid, and no further Estate Duty or Settlement Estate Duty should be paid until either (*a*) the estate was disentailed, or (*b*) a subsequent heir of entail entitled to disentail without consents, died. This remained the position until the passing of the F. A. 1914, which abolished (by s. 14) the above exemption as regards deaths after 15th August, 1914, preserving the exemption only in the case of the death of one of the parties to a marriage, where Estate Duty had been paid on the death of the other party to the marriage. The same section abolished the charge of Settlement Estate Duty in the case of persons dying after 11th May, 1914. The effect of the section was considered by the Scottish Courts in the case of *Lord Advocate* v. *Moray* (1917), 1 S. L. T. 168, and it was held that it prevented the exemption from duty of the property passing on the cesser of an annuity charged on entailed estate, notwithstanding that Estate Duty had been paid by a prior death on such estate.

It will be in view that in connection with the abolition of the exemption from further Estate Duty, provision was made—by the F. A. 1914, s. 14 (*b*)—(1) for allowance of any Settlement Estate Duty paid on a prior passing against the Estate Duty assessable; (2) for repayment of any excess to the estate; and (3) for payment of interest on the Settlement Estate Duty from 15th August, 1914, to the several persons (or their representatives) who would have been entitled to the income of such Settlement Estate Duty if it had been added to the capital of the property on 15th August, 1914; and reference is made to the notes on pp. 268–273, *infra*. The allowance of Settlement Estate Duty is not given if Estate Duty is payable without the necessity of

invoking the provisions of the Act of 1914, and is forfeited to the extent that the lands have been disentailed (*Lord Advocate* v. *Moray* (1919), 2 S. L. T. 258).

It may be noted that the provisions of the F. A. 1900, s. 11 (1), under which property is deemed to pass on the death of a life tenant who has surrendered, in certain circumstances, his interest to the reversioner (*see Release of Life Interest,* pp. 48–52, *supra*), apply in Scotland, under s. 11 (2) of the Act, to the conveyance or discharge of any life-rent in favour of the fiar, or to the propulsion of the fee under any simple or tailzied destination.

Owing to the decision in the case of *A.-G.* v. *Richmond and Gordon,* [1909] A. C. 466, where heritable bonds had been granted to secure on an estate the amount of the values of the consents of the subsequent heirs to the disentail of that estate, that such bonds formed good deductions in a question of Estate Duty, it was enacted by the F. A. 1910, s. 57, that in the case of deaths on or after 30th April, 1909, allowance was not to be made in respect of any debt or incumbrance incurred or created in whole or in part in consideration of the purchase or acquisition or extinction of any interest in expectancy in the property passing or deemed to pass. The section applies, however, only where the person whose interest in expectancy was so purchased, acquired, or extinguished becomes (under a disposition made by, or through devolution of law from, or under the intestacy of the deceased) entitled to an interest in the property, in which case the property is deemed to pass freed from that debt or incumbrance. If part only of the debt was created for the above consideration, or if the person whose interest in expectancy was purchased becomes entitled to an interest in part only of the property, only a proportion of the debt is disallowed.

By s. 23 (18) of the F. A. 1894, it was enacted, in

applying the Act to Scotland, that where any person who pays Estate Duty on property not vested in him, and is authorised by the Act to raise such duty by sale or mortgage of the property (*see* s. 9 (5) of the Act), he may apply to the Court of Session for an order of sale of the property, or part of it, which order, if granted, is to provide for payment of the duty which has been paid by the applicant, and for disposal of any surplus, with power to the Court to ordain the person in whom the property is vested to convey it to the purchaser or, if necessary, to effect this by a disposition by the Clerk of the Court which receives statutory validity. Alternatively, he may apply for an order on the person in whom the property is vested to grant a bond and disposition in security over the property in favour of the person who has paid the duty, with power to the Court, if necessary, to authorise the Clerk of Court to grant such a bond, this also receiving statutory validity. This section is not confined in its application to entailed property, but the points under it, and the parent s. 9 (5), which have come before the Scottish Courts in connection with Scottish heritable property may conveniently be noted here. As regards (*a*)—the order of sale—the expenses of the application to the Court may be allowed out of the sale price (*Mackechnie, Petitioner* (1898), 6 S. L. T. 242) on the ground (as explained by Lord Pearson in *Menzies, Petitioner, infra*) that the surplus price is put by Statute at the disposal of the Court. Similarly, where Estate Duty and Settlement Estate Duty had been paid by the executor of a deceased heir of entail, such executor being also himself the next heir of entail, he was held entitled to an order to repay himself out of the entailed money representing the price of the entailed lands which had been sold after the death of the deceased heir, with the expenses of the application (*Bedell-Sivwright's Curator Bonis,* [1924] S. L. T.

17). Where there is nothing special in the circumstances, however, application to the Court is unnecessary, as s. 9 (5) gives an unqualified power of sale for raising the duty (*Orr Ewing, Petitioner* (1920), 1 S. L. T. 259); and where the funds held—from which Estate Duty on both funds and lands was paid—were compensation moneys falling to be dealt with under the Lands Clauses (Scotland) Act, 1845, the expenses of the application were refused (*Chaplin and Others, Petitioners,* [1926] S. L. T. 422). As regards (*b*)—the granting of a bond and disposition in security—a life-renter who was also fiduciary fiar for his son was empowered to grant, in his capacity as fiduciary fiar, a bond for the duty which he had paid as life-renter (*Menzies, Petitioner* (1903), 10 S. L. T. 636). He was, however, refused permission to include any of his expenses in the amount of the bond, there being no provision for this in s. 23 (18), and expenses were also refused to an heir of entail in *Laurie, Petitioner* (1898), 25 Rett. 636, and to a life-renter in *Turnbull, Petitioner* (1910), 2 S. L. T. 328. In a later case, however (*Farquharson's Trustees* (1915), 2 S. L. T. 176), the Court distinguished between (1) the expense of settling the duty, (2) the expense of the bond, and (3) the expense of the application to the Court, and allowed the bond to include items (1) and (2) though not (3). It appears that notwithstanding the clear terms of s. 9 (5) it is difficult to find lenders without the authority of the Court, and the Court comes to the aid of trustees who find themselves in this difficulty by granting, under its *nobile officium,* authority to burden the estate for the amount of the duties and the expenses of settling them, but not the expenses of the petition (*Harris's Trustees* v. *Harris* (1904), 6 Fra. 470). The fiar cannot insist on the security taking the form of a terminable charge (*Turnbull* v. *Turnbull,* [1910] S. C. 766), but the *cumulo* amount of duty may be charged by

an heir of entail on two estates destined to the same series of heirs (*Callander-Brodie* (1904), 12 S. L. T. 474).

The effect of the words "entitled to . . . [a] charge" in the F. A. 1894, s. 9 (6), as affecting Scottish entailed property was considered by the House of Lords in the case of *Lord Advocate* v. *Moray,* [1905] A. C. 531, in which it was held that an heir of entail answered to the description of a person having a limited interest, and that an heir of entail who had paid duty became entitled automatically to a charge therefor on the lands, so that he had, on his death, without having taken any further step to make the duty paid a real burden on the estate, a vested transmissible interest in the amount of duty paid.

By s. 23 (17) it is provided that where an institute or heir of entail who is not entitled to disentail without consents has paid Estate Duty and then disentails the estate, he may deduct a proportion of the duty paid from the money value of the expectant interests of the subsequent heirs payable in respect of their consent to the disentail. This section was held to apply though the Estate Duty was not paid until after the disentail (*Fowler, Petitioner* (1916), 2 S. L. T. 160).

As to what comprises entailed estate in Scotland, reference may be made to the case of *Lord Advocate* v. *Stewart,* [1902] A. C. 344, in which the House of Lords held that money held in trust for investment in lands either in Scotland or in England was not "entailed estate" within the meaning of s. 23 (16) of the F. A. 1894. It appears from that judgment, however, that if the money had been directed to be laid out solely in land in Scotland to be strictly entailed according to Scottish law, it would have been "entailed estate" in the sense of the section.

L.—Property outside Great Britain.

The Expression "Great Britain."

For the purposes of the Estate Duty payable to the Imperial British Exchequer (with the duties payable to which Exchequer this work is alone concerned), Great Britain includes England, Wales and Scotland, but not Ireland, the Channel Islands and the Isle of Man.

As regards Ireland the position has been somewhat complicated owing to the difference of the dates on which the Northern Irish and the Irish Free State Parliaments have respectively been set up; and, as regards the Irish Free State, owing to the further fact that although that State came legally into being on the 6th December, 1922, the scheme of taxation then previously existing in the United Kingdom (exclusive of Northern Ireland) was temporarily continued until the 31st March, 1923, by the express terms of s. 2 of the Irish Free State Constitution Act, 1922.

The provisions of this Act of the United Kingdom Parliament synchronise in this connection with Article 74 of the Irish Free State Constitution as passed by the Parliament constituted in Ireland pursuant to the Irish Free State (Agreement) Act, 1922.

In the result, as regards claims for Estate Duty in connection with deaths occurring since the 31st March, 1923, all property situate in Ireland ranks as colonial or foreign property for the purposes of the Estate Duty payable to the British Imperial Exchequer. When, however, the death occurred between the 21st November, 1921, and the 1st April, 1923, it is only property situate in Northern Ireland that is so treated. But where the death occurred before the 22nd November, 1921, the territorial area for the duty in question was the United Kingdom of Great Britain and Ireland as it then existed, property situate out of the United Kingdom only coming

within the charge of the duty subject (as explained below) to the terms of s. 2 (2) of the F. A. 1894.

The death duty enactments of the United Kingdom Parliaments passed since the 31st March, 1923, are, it will be found, limited in their operation to Great Britain only. Further, in their relation to claims arising in connection with post-March 1923 deaths, the pre-April 1923 death duty enactments of that Parliament have, by means of certain statutory rules and orders, been adapted to meet the new circumstances. The two principal adaptation orders in question are the Government of Ireland (Adaptation of the Taxing Acts) Order, 1922 (S. R. & O., 1922, No. 80), made under the powers to that effect conferred by the Government of Ireland Act, 1920, and the Irish Free State (Adaptation of the Taxing Acts) Order, 1923 (S. R. & O. 1923, No. 405), made under the powers to that effect conferred by the Irish Free State (Consequential Provisions) Act, 1922. For the purpose of current claims for duties leviable in Great Britain it may be said, speaking in general terms, that these Orders (*inter alia*) make the expression "the United Kingdom," appearing in the pre-April 1923 Acts, read as "Great Britain."

The Channel Islands and the Isle of Man have never formed part of the United Kingdom or of Great Britain for the purposes of the death duties.

Locality of Assets.

It is necessary for the present purpose to attribute a locality to assets of an intangible nature. As the subject is complicated and the law in some respects doubtful, the following paragraphs are designed only to deal in outline with the questions which arise most frequently in practice.

The following are the general rules:—

(1) The locality of a security represented by a document of title, the property in which passes

by delivery, or, in other words, a "bearer" security, is determined by the situation of the document at the deceased's death.

(2) The locality of a security not passing by delivery is determined by the situation of the register, entry upon which is necessary to complete the title of the owner of the security.

(3) The locality of debts and other *choses in action* is in the country where the debtor resides and where proceedings to enforce payment can be taken.

The general rule as to registered securities implies that a share can only be registered at one and the same time on one register. This position necessarily obtains as to all registered securities in a British company, whether the particular register is the principal register, which must be kept in Great Britain, or one of the Dominion registers, which, in the exceptional circumstances set out in ss. 103 and 104 of the Companies Act, 1929, may be kept outside Great Britain. But certain non-British companies, incorporated outside Great Britain, have established duplicate registers on any one of which it appears to be permissible to the shareholder to record the transfer of his security. For instance, certain companies incorporated in the Transvaal, and having their chief office and register in that colony, where the central management and control abide, keep duplicate registers in England, and shares can be transferred on either register, but no transfer can be registered in England until the Transvaal death duties have been paid. In these exceptional cases, if the share certificates are in Great Britain on the death of the owner, and the shares are registered on a register in Great Britain (though not exclusively transferable on that register), the shares are considered to be British assets and liable to Estate Duty without regard to the

domicile of the owner (*re Clark, McKechnie* v. *Clark*, [1904] 1 Ch. 294), but the Transvaal duty is in practice allowed against the value for Estate Duty.

If, however, the certificates are *not* in Great Britain, and the owner is not domiciled in Great Britain, such shares escape the British death duties.

As regards debts, the ordinary rule is that a simple contract debt is situate in the country where the debtor resides at the creditor's death and where payment can be enforced (*A.-G.* v. *Bouwens* (1838), 4 M. & W. 171, per the Lord Chief Baron at p. 191 of the report). Under Scottish law it makes no difference whether the document creating or securing the debt is under seal or not, so that a debt owing by a person resident in Scotland may be regarded as situate there in all cases. But the general rule of English law is that a specialty debt is situate at the place where the specialty is found at the creditor's death (*Commissioner of Stamps* v. *Hope*, [1891] A. C. 476). The only exception is provided by the Revenue Act, 1862, s. 39, which, as incorporated by the F. A. 1894, ss. 6 (1) and 8 (1), and adapted as regards Ireland, enacts that specialty debts due from persons in Great Britain and Northern Ireland shall, for the purposes of Estate Duty on the *free estate*, be in the same position as simple contract debts without regard to the situation of the specialty at the death of the deceased.

Mortgage debts are governed by the same rules as other debts. If, in a case coming under the ordinary English rule as to specialties, the mortgage deed is executed in duplicate, one copy being (necessarily) filed in a registry, and the other copy being elsewhere, the debt is situate where the registry is (*Toronto General Trusts Corporation* v. *The King*, [1919] A. C. 679). If the mortgage is not under seal, or if the Revenue Act, 1862, applies, the residence of the mortgagor, and not

the situation of the mortgaged property, is the primary test (*Payne* v. *The King,* [1902] A. C. 552).

If a debtor company has domiciles or residences in different countries the situation of the debt is *primâ facie* that of the company's head office. But it is necessary to look at the terms of the contract, and if the debt is in fact localised to one particular branch of the company, it is situate in the country in which that branch is situate. If, for example, policy moneys are payable by an insurance company which has its head office and general management in the United States, but the amount is, under the contract, properly payable by a branch of the company in this country, and is enforceable by process of law here, the debt is an English *chose in action* situate in this country (*New York Life Insurance Co.* v. *Public Trustee,* [1924] 2 Ch. 101). The company must have a *residence* at the branch at which a debt is to be localised : a mere agency is not sufficient. And if the payment falls to be made, under the terms of the contract, either at the head office or at a branch, the locality of the head office must presumably prevail. In the case of banks a credit balance is treated as a matter of course as situate at the branch where the account is kept (*The King* v. *Lovitt,* [1912] A. C. 212). Thus a sum on deposit at a branch of an English bank in the Isle of Man is a Manx asset, not an English asset. But deposits in Savings Banks in this country, belonging to persons dying domiciled in the Isle of Man or Channel Islands, are generally deemed, under special Regulations, to be situate in the place of domicile. This is extended by concession to the case of persons dying domiciled in Northern Ireland.

Crown debts and debts arising under a Statute are always regarded as specialty debts, so that the situation of the asset under English law depends *primâ facie* on the physical situation of the document of title. This

principle has been applied to *bonds* of a colonial government, though not in themselves completely operative to pass the title on mere delivery (*Royal Trust Co.* v. *A.-G. for Alberta,* [1930] A. C. 144), but the decision is not capable of being applied to *stocks*.

Where the deceased had an interest in property which was vested at the time of the death in another person, it is necessary to determine in the first place *what* passed on the death—the property *in specie* (or a share thereof), or merely a right of action against the other person. In the former case the locality of the property is all that need be considered: in the latter case the situation which is material for the present purpose is that of the other person's residence, *i.e.,* the place where the right of action must primarily be exercised. If the property is vested in the other person as mortgagee, the deceased mortgagor must be regarded as having been the owner of an estate or interest in the mortgaged property, not a mere personal right against the mortgagee (*Santley* v. *Wilde,* [1899] 2 Ch. 474; *Baker* v. *Archer-Shee,* [1927] A. C. 844; *A.-G.* v. *National Provincial Bank* (1928), 44 T. L. R. 700). The same principle applies where the property is held by a trustee or nominee for the deceased. Even if the latter had only a life interest, the settled property *in specie* will have *passed* on his death. But the right of a residuary legatee, under English law and many other legal systems, is not to the specific assets of his testator. He is entitled merely to require the executors to administer the estate, and to receive from them the clear residue, or a share thereof, as the case may be. The same rule applies under an intestacy. On the death of a residuary legatee or person entitled under an intestacy, while the original estate is still under administration, the locality of his interest, as an asset in his estate, is consequently determined by the resi-

dence of the debtors, viz., the personal representatives of the original testator or intestate (*Sudeley* v. *A.-G.*, [1897] A. C. 11; *Barnado's Homes* v. *Special Commissioners*, [1921] 2 A. C. 1; *re Steinkopff, Favorke* v. *Steinkopff*, [1922] 1 Ch. 174). The Revenue has conceded the application of this principle to cases where the deceased beneficiary was also the sole personal representative of the other deceased person. But it is not clearly settled how far, if at all, the principle applies to cases other than that of an estate in course of administration. It does *not* apply to a case where the deceased is tenant for life of a specific fund (*see Baker* v. *Archer-Shee*, *supra*).

A similar rule applies to a share in a partnership. It makes no difference whether the property belonging to the firm is moveable or immoveable: the property of which a deceased partner dies possessed is not a share of the firm's property *in specie*, but a right against the firm or the surviving partners, which is personal and moveable property (*Forbes* v. *Steven* (1870), L. R. 10 Eq. 178; *A.-G.* v. *Hubbock* (1884), 13 Q. B. D. 275; *re Stokes, Stokes* v. *Ducroz* (1890), 62 L. T. 176). But the situation of the asset is primarily determined by the principal place of business of the firm, whether the surviving partners reside in the same country or not (*Commissioner of Stamp Duties* v. *Salting*, [1907] A. C. 449).

The moveable property in this country at a foreign embassy of a foreign sovereign, foreign ambassador or other agent, though actually situate here, is considered to be constructively situate abroad (unless the deceased died domiciled here) and is not therefore liable to Estate Duty on his death. Subject as above, all property in this country, whether owned by a foreign sovereign or his ambassador, or by any other member of his court, is chargeable with Estate Duty in the event of the owner's death.

Ships, and shares of ships, registered at a British port, are deemed to be situate there (Revenue (No. 2) Act, 1864, s. 4).

In the event of a conflict of laws, the locality of any property for the present purpose must be determined in accordance with English or Scottish law. In the case of a mortgage of foreign property, for example, the mortgage debt may be taxable as an English asset, on the ground that the mortgage deed was in England at the mortgagee's death, notwithstanding that, under the law of the country where the mortgaged property lies and where the mortgagor resides, the debt may be situate there.

In accordance with the rules given above, the following assets are considered to be situated in Great Britain, and are liable to Estate Duty even if the owner dies domiciled outside this country:—

(1) Foreign bonds to bearer actually in Great Britain at the death, the property in which can be fully transferred without any act done outside the jurisdiction of this country (*Winans* v. *A.-G.*, [1910] A. C. 27).

(2) American rail and other certificates actually situate here at the death, which by reason of a signed transfer in blank endorsed thereon are marketable here and pass by delivery (*Stern* v. *The Queen*, [1896] 1 Q. B. 211).

(3) Inscribed or registered stock of a colony which is transferable in the books of the Bank of England or elsewhere in Great Britain.

(4) Stocks and shares of a foreign or colonial government or municipality or company, registered and exclusively transferable on a register in Great Britain, or registered on a register in Great Britain (although not

exclusively transferable on that register) with the relative certificates also in Great Britain (*re Clark, McKechnie* v. *Clark,* [1904] 1 Ch. 294).

(5) Stocks and shares of a British company registered on a register kept in Great Britain, regardless of the field of operations of such company (*cf. A.-G.* v. *Higgins* (1857), 2 H. & N. 339; *Brassard* v. *Smith,* [1925] A. C. 371; *Erie Beach Co. Limited* v. *A.-G. for Ontario,* [1930] A. C. 161).

(6) A specialty debt owing by a person abroad, if the actual deed is in England, and a specialty debt owing by a person in Great Britain, forming part of the deceased's free estate, even if the actual deed is elsewhere.

(7) Moveable and immoveable property outside Great Britain, forming part of the assets of a British firm. Conversely, property in this country forming part of the assets of a foreign partnership is situate for the present purpose in the country where the business is carried on. The underlying principle is that the property of which a partner dies possessed is not a share of the firm's assets *in specie* but a right against the firm.

(8) Moveable and immoveable property outside Great Britain (*a*) in process of administration by executors or administrators resident here (*Sudeley* v. *A.-G.,* [1897] A. C. 11), or (*b*) held on trust for sale (with or without a power to postpone the sale), under a British settlement (*A.-G.* v. *Johnson,* [1907] 2 K. B. 885). Strictly, the subject of taxation is not the specific property but the notional proceeds of sale.

Estate Duty on non-British Property.

Under the F. A. 1894, ss. 1 and 2 (1), Estate Duty is payable *primâ facie* in respect of *all* property passing or deemed to pass on death, without reference to its situation. But s. 2 (2), as adapted with regard to Ireland, provides that property situate out of Great Britain shall be included for duty only if, under the law in force before the passing of the Act, Legacy Duty or Succession Duty is payable in respect thereof, or would be so payable but for the relationship of the person to whom the property passes.

Where property has been bequeathed to or settled on different persons in succession and (the persons being chargeable at the same rate) Legacy Duty or Succession Duty has been paid on the capital value, such duty is deemed for the present purpose, as regards deaths on or after the 16th April, 1923, to be payable on the death of *each* of those persons in succession, notwithstanding that the whole of the duty was actually paid on one death only (F. A. 1923, s. 37, nullifying for the future the decision in *A.-G.* v. *Burns,* [1923] 2 K. B. 77).

A foreign asset does not escape Estate Duty on the ground that the whole free estate (not exceeding £1,000) is exempt from Legacy Duty under the F. A. 1894, s. 16 (3), because s. 2 (2) refers to the law in force *before* the Act.

The circumstances in which Legacy Duty and Succession Duty are payable in respect of property abroad are discussed more fully at pp. 338–339 and 433–441, *infra*.

In summarising the position from the point of view of the Estate Duty, it is first necessary to classify non-British property as *moveable* or *immoveable*. Generally speaking the distinction corresponds with the English distinction between personal and real property, except that leaseholds, though immoveable, are, of course, personal property. The question, in which category any particular subject of property falls, is determined

by the law of the place where it is situate—the situation having been first ascertained, for the present purposes, in accordance with English or Scottish law. If the deceased was mortgagee of land in a foreign country and the mortgagor is resident in England, the mortgage debt is an English asset, and the question, how it is regarded by the law of the foreign country, does not arise. But if the mortgagor is resident in the foreign country where the land is situate (and the mortgage *deed,* if any, is also there at the death), the question whether the asset is moveable or immoveable, depends on the law of the foreign country. In the absence of evidence to the contrary, a colonial or foreign mortgage debt may be assumed to be moveable (*Lawson* v. *Inland Revenue Commissioners,* [1896] 2 I. R. 418).

The following general rules may be given:—

1. Immoveable property outside Great Britain, devolving on death as such, is outside the scope of the British death duties.
2. Legacy Duty is payable in respect of (*inter alia*) all moveable property wheresoever situate—
   (*a*) devolving under the will or intestacy of a person dying domiciled in Great Britain, whether on his own death or on the death of a person taking a limited interest under the will or intestacy, or
   (*b*) comprised in a testamentary appointment by a person dying domiciled in Great Britain, under a general power, or
   (*c*) taken under a *donatio mortis causa* made by a person dying domiciled in Great Britain.
3. Succession Duty is payable in respect of (*inter alia*) all moveable property wheresoever situate taken as a succession—
   (*a*) under a disposition for which, when it first became operative, the forum of administration

was British (including property comprised in a testamentary appointment under a general power created by such disposition, if the appointor dies domiciled abroad, so that Legacy Duty is not payable under his will), or

(*b*) under a disposition for which the forum is British when the succession falls into possession, or

(*c*) otherwise by virtue of English or Scottish law.

The practical effect of these principles, as regards moveable property outside Great Britain, is as follows:—

Free Estate.—Estate Duty is payable if the deceased dies domiciled in Great Britain, but not otherwise. This follows the liability to Legacy Duty, as settled in *Thomson* v. *Advocate-General* (1845), 12 Cl. & F. 1. Property over which the deceased exercised a general power of appointment by will is similarly liable if he dies domiciled in Great Britain (Revenue Act, 1845, s. 4). It makes no difference that the power may have been created by the will of a person dying domiciled abroad or by a foreign settlement. If, however, the power was conferred by a British will or settlement, Estate Duty is payable even if the appointor died domiciled abroad, by reason of the liability to Succession Duty (*re Lovelace* (1859), 4 De G. & J. 340; *re Wallop's Trust* (1864), 1 De G. J. & Sm. 656).

Competent to Dispose.—There is no liability by reason merely that the deceased was competent to dispose, even if he died domiciled in this country, but in practice the property will

frequently fall also under some other charging provision.

Settled Property.—Estate Duty is payable in respect of property passing on the death of a life tenant if either—

(*a*) the settlement was created by the will of a person dying domiciled in Great Britain, or

(*b*) the settlement was originally a British settlement, or

(*c*) the settlement is a British settlement at the life tenant's death.

In ordinary circumstances case (*a*) follows the liability to Legacy Duty, and is an extension of the principles applying to the free estate. Those principles hold good not only on the testator's own death but also in relation to all the subsequent devolutions under his will. If the foreign property represents the proceeds of sale of the testator's real estate, the ground for levying Estate Duty is the liability to Succession Duty instead of Legacy Duty.

In case (*b*) the charge of Estate Duty follows that of Succession Duty. If a settlement is made in the English language and English form, with English or mainly English trustees, it is assumed that the settlor has deliberately submitted the scheme to English law and indelibly stamped it as an English scheme. Succession Duty, and by consequence Estate Duty, are therefore payable in respect of moveable property abroad which devolves under the settlement, even if the settlor and beneficiaries are, or were, domiciled outside Great Britain (*re Cigala's Settlement Trusts* (1878), 7 Ch. D. 351; *A.-G.* v. *Jewish Colonisation Association*, [1901] 1 K. B. 123; pp. 434–438, *infra*).

In the cases cited, the settlement was still British at the date of the death in question, but it makes no difference that the settlement, if originally created by a British will or a British disposition *inter vivos,* may be no longer a British settlement at the death—as regards Legacy Duty the liability is fixed once for all by the domicile of the testator, the relevant Acts taking no cognisance of the place where the trusts may be executed. And as regards Succession Duty the rule is that "a succession within the Act [S. D. A. 1853] once established, no manipulation of the parties afterwards can get rid of it; and the observation is equally true whether there be one or two successions" (*Northumberland* v. *A.-G.,* [1905] A. C. 406). As mentioned in connection with the *Free Estate,* Succession Duty, and by consequence Estate Duty, are payable, under a British will or disposition which confers a general power of appointment, in respect of property comprised in an appointment thereunder by the will of a domiciled foreigner.

In case (*c*), where the settlement is British at the time of the death in question, it is immaterial that such settlement was non-British in its origin (*cf. A.-G.* v. *Campbell* (1872), L. R. 5 E. & I. App. 524; pp. 438–439, *infra*). A settlement which is non-British in its inception will not, however, be considered to have become a British settlement by reason merely that new trustees have been appointed, who are resident here (*A.-G.* v. *Belilios,* [1928] 1 K. B. 798; pp. 439–441, *infra*).

Interests Ceasing.—The principles are the same as in the case of *Settled Property.*

Donationes mortis causa.—Estate Duty is payable if the deceased dies domiciled in Great Britain, but not if he dies domiciled elsewhere.

Gifts inter vivos.—Out-and-out gifts are not chargeable. Gifts with reservation may be chargeable on the same principles as *Settled Property.* Estate Duty may be payable, even if the actual subject-matter of the gift was not settled, where the benefit reserved or stipulated for by the deceased donor would have been enforceable by the English or Scottish Courts. If there was no enforceable reservation, there is no liability to Succession Duty, or by consequence to Estate Duty, by reason merely that the donee did not assume and retain *bonâ fide* possession and enjoyment to the entire exclusion of the deceased. In the case of the surrender of a life interest, Estate Duty is normally payable wherever it would have been payable if there had been no surrender, for the surrender does not avoid the liability to Legacy Duty or Succession Duty.

Joint Property.—Estate Duty is payable only where the *jus accrescendi* depends on English or Scottish law.

Policies and Interests Provided by the Deceased.—Estate Duty is payable only where the policy or interest is the subject of a British settlement or disposition, or where the title of the beneficiary is otherwise based on English or Scottish law. Thus if the deceased effected and kept up a policy on his life with an American insurance company, the sum assured being made payable to his wife for her own benefit, and being recoverable only at the company's head office abroad, there is no liability for any British

duty. But if the deceased kept up a non-British policy, which was effected in the names of, or assigned to, the trustees of a British settlement, Estate Duty is payable by reason of the liability under the settlement to Succession Duty.

CHAPTER II.

THE RATES AND AMOUNT OF ESTATE DUTY.

THERE are two species of Estate Duty, viz., *ad valorem* duty and the fixed duties. The more important is the former, which is levied at the appropriate rate per cent. on the exact net value of the property chargeable. An essential characteristic of the duty, from its first introduction, is the *graduation* of rates, so that the burden on the larger estates is proportionately greater than on small estates. This principle has been carried further in each revision of the scale. While the rates on estates not exceeding £5,000 have remained unchanged since 1894, the maximum rate has advanced from 8 per cent. to 50 per cent. The increases in rates imposed by the F. A. 1930 affect only estates exceeding £120,000.

Where the net principal value of an estate, whether consisting of real property or personal property only, or of both, does not exceed £100, no Estate Duty is leviable.

The rates of duty respectively payable on deaths before the under-mentioned dates are given in the Appendix, at the pages noted:—19th April, 1907—p. 586; 30th April, 1909—p. 599; 16th August, 1914—p. 607; 31st July, 1919—p. 612; 30th June, 1925—p. 617; 1st August, 1930—p. 630.

The scale applicable in the case of deaths on or after the 1st August, 1930, under the F. A. 1930, s. 33 and Second Schedule, is given below, as are also the maximum values up to which there is "margin relief" under the F. A. 1914, s. 13 (1), *infra*).

Principal Value of the Estate.					Rate per cent of Duty.	Margin.		
	£			£		£	s.	d.
Exceeding	100	and not exceeding		500	1	101	0	3
,,	500	,,	,,	1,000	2	505	2	1
,,	1,000	,,	,,	5,000	3	1,010	6	3
,,	5,000	,,	,,	10,000	4	5,052	1	8
,,	10,000	,,	,,	12,500	5	10,105	5	4
,,	12,500	,,	,,	15,000	6	12,632	19	7
,,	15,000	,,	,,	18,000	7	15,161	5	10
,,	18,000	,,	,,	21,000	8	18,195	13	1
,,	21,000	,,	,,	25,000	9	21,230	15	5
,,	25,000	,,	,,	30,000	10	25,277	15	7
,,	30,000	,,	,,	35,000	11	30,337	1	7
,,	35,000	,,	,,	40,000	12	35,397	14	7
,,	40,000	,,	,,	45,000	13	40,459	15	5
,,	45,000	,,	,,	50,000	14	45,523	5	2
,,	50,000	,,	,,	55,000	15	50,588	4	9
,,	55,000	,,	,,	65,000	16	55,654	15	3
,,	65,000	,,	,,	75,000	17	65,783	2	8
,,	75,000	,,	,,	85,000	18	75,914	12	9
,,	85,000	,,	,,	100,000	19	86,049	7	8
,,	100,000	,,	,,	120,000	20	101,250	0	0
,,	120,000	,,	,,	150,000	22	123,076	18	6
,,	150,000	,,	,,	200,000	24	153,947	7	5
,,	200,000	,,	,,	250,000	26	205,405	8	2
,,	250,000	,,	,,	300,000	28	256,944	8	11
,,	300,000	,,	,,	400,000	30	308,571	8	7
,,	400,000	,,	,,	500,000	32	411,764	14	2
,,	500,000	,,	,,	600,000	34	515,151	10	4
,,	600,000	,,	,,	800,000	36	618,750	0	0
,,	800,000	,,	,,	1,000,000	38	825,806	9	1
,,	1,000,000	,,	,,	1,250,000	40	1,033,333	6	8
,,	1,250,000	,,	,,	1,500,000	42	1,293,103	9	0
,,	1,500,000	,,	,,	2,000,000	45	1,581,813	3	8
,,	2,000,000	,,	,,	—	50	2,200,000	0	0

Margin Relief.

Provision was made by the F. A. 1914 to meet cases of hardship where an estate just reaches above one of the steps of the scale, and the maximum

figures, up to which this relief applies, are given in the final column of the above table. In such cases the amount payable is to be the highest amount of duty payable at the next lower rate plus the amount which brings the estate over the next step in the scale (F. A. 1914, s. 13 (1)). The additional *duty* is not in fact to exceed the additional *value* which has attracted the higher rate of duty. Thus:—

	£	s.	d.
Net Estate	5,050	0	0
Duty thereon at 4 per cent.	202	0	0
Under the relieving provision, however, the highest amount of duty calculated at the next lower rate—viz. 3 per cent.—would be	150	0	0
But to this must be added the amount which brings the estate over the 3 per cent. limit: viz.	50	0	0
	£200	0	0

The latter amount, being less than the full duty at 4 per cent., is the correct sum payable.

As will appear below, all property chargeable with Estate Duty on the death (with exceptions) is aggregated to form one estate for the purpose of determining the rate of duty. The "estate" for the present purpose, therefore, is the sum total of all the aggregable properties. If in the above instance there were other aggregable properties value £4,300 and £9,500, the unit for aggregation would be £18,850, and the rate of duty on each property 8 per cent. No claim for relief under the sub-section would in these circumstances arise. Where an aggregated estate comprising several units just exceeds a step in the scale, the abatement in the

total duty has to be apportioned rateably between the various units.

Any benefit which the deceased's free estate, if it just exceeds £1,000, may be entitled to under this provision is in addition to the limitation of Legacy and Succession Duty provided for by sub-s. (2) of the same section. Where, therefore, the net value does not exceed £1,010 6s. 3d., and the beneficiaries are strangers in blood, the total relief from Estate Duty and Legacy and Succession Duty will be substantial. The odd sum not exceeding £10 6s. 3d. will be taken into account in fixing the amount of Estate Duty and will also be the sum payable for Legacy and Succession Duty (*see* pp. 382 and 404).

Fixed Duties.

The fixed duties are 30s. and 50s., and may be paid in the following circumstances: viz., where the *gross* value of the property in respect of which Estate Duty is payable, exclusive of property settled otherwise than by the will of the deceased, does not exceed £300, a fixed duty of 30s.: and where such value exceeds £300 but does not exceed £500, a fixed duty of 50s. may be paid, instead of *ad valorem* duty according to the foregoing scale (F. A. 1894, s. 16 (1)).

In deciding whether the fixed duty should be paid or payment should be made according to the scale, the following considerations should be taken into account:—

(*a*) The amount payable if the fixed Estate Duty is paid on the *gross* estate or duty is paid on the *net* estate according to the *ad valorem* scale.

(*b*) Interest at the rate of 4 per cent. is chargeable on the *ad valorem* duty from the date of death in the case of personal estate and from one year from the death in the case of real estate. Such interest is not chargeable upon the fixed duties if paid within a year of the death (F. A. 1894,

s. 16 (5)), even if the estate includes personal estate as well as real estate. But if the fixed duty is paid more than a year after the death, interest is charged from the death.

(*c*) The fixed duty may be paid expeditiously by means of an adhesive stamp affixed to the affidavit.

(*d*) If the fixed duty has been paid and it is afterwards found that assets forming part of the deceased's estate have been omitted from the affidavit, so that the estate is brought over £500 and the *ad valorem* duty has to be paid, the amount of the fixed duty can be allowed if the Commissioners are satisfied that there were reasonable grounds for the original estimate of the value of the property (Revenue Act, 1903, s. 14).

Where the fixed duty of 30s. has been paid and it is afterwards found that 50s. should have been paid, only the difference between the two amounts is payable, whatever was the cause of the omission.

(*e*) The fees of the Probate Court in the fixed duty cases amount to 15s. only.

(*f*) In ascertaining the gross value no deductions can be taken in respect of debts and incumbrances, but where the estate includes real or leasehold property subject to mortgages not created by the deceased, or mortgages or charges created by the deceased for the purpose of purchasing the property (F. A. 1910, s. 61 (2)), such mortgages or charges may be deducted in fixed duty cases. And in practice, money borrowed for the purpose of building, mortgages on policies made to the issuing office as security for a loan made by it to the

deceased, and also mortgages to any other person where notice of mortgage has been given to the insurance company, can be deducted.

(*g*) Interests in expectancy or shares of joint property may in general, at the parties' option, be included in the gross estate not exceeding £500, and in that case will obtain the benefit of exemption from other duties and from aggregation, or they may, if preferred, be treated as settled property. For instance, if the free estate were £480 gross and there were an interest in expectancy or a share of joint property worth £400, the fixed duty of 50s. could be paid on the free estate and *ad valorem* duty at 1 per cent. on the reversion or share of joint property, but in that case the latter would not be entitled to exemption from the 5 per cent. or 10 per cent. rates of Legacy and Succession Duty and from aggregation. The question, what properties must be taken into account as comprising a gross estate not exceeding £300 or £500, is governed by the same principles as apply to net estates not exceeding £1,000 (*see* pp. 125–128).

Estates not Exceeding £1,000.

The above remarks bring under notice a very important provision for the benefit of small estates already incidentally mentioned: that is, where the net value of the property, real and personal, in respect of which Estate Duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed £1,000, such property is not to be aggregated with any other property passing on the deceased's death, but is to form an estate by itself. And where the fixed duty or Estate Duty at the *ad valorem* rate has been paid on the principal value of

that estate, Legacy Duty and Succession Duty are not payable in respect of that estate (F. A. 1894, s. 16 (3)). It was also exempted from Settlement Estate Duty, but although that duty has been abolished there is no exemption from a second Estate Duty under s. 14 of the F. A. 1914, where the estate is settled, except in the case of parties to a marriage.

Moreover, where such an estate includes any purely agricultural property, the maximum value thereof, for either *ad valorem* or fixed Estate Duty, is twenty-five times the net property tax assessment (F. A. 1894, s. 7 (5), proviso; F. A. 1910, s. 61 (1); pp. 143–144, *infra*).

As to the property included in the estate for these purposes, *see* pp. 125–128.

Aggregation.

For the purpose of determining the rate of Estate Duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which Estate Duty is leviable (with special exceptions) has to be aggregated so as to form one estate, and the duty is levied at the proper graduated rate on the principal value thereof (F. A. 1894, s. 4). For example: on the death of *A*, the following properties pass: (1) His free, real and personal estate worth £3,000; (2) Property settled by his marriage settlement worth £4,500; (3) Real estate worth £6,000 settled upon him by his father by deed. Now if each of these properties were taken separately, the rate of duty would be 3 per cent. for the first two and 4 per cent. for the third. But under the rule of aggregation they must all be added together to form one aggregated estate amounting to £13,500, and as the rate for an estate of this amount is 6 per cent., Estate Duty must be paid on each property at that rate.

Aggregation only affects property which is actually or notionally chargeable with Estate Duty, so that where

property passing is exempted from Estate Duty it is not liable to aggregation (F. A. 1894, s. 4). For exemptions from Estate Duty, *see* Chapter IV, *infra*. But the fact that the Estate Duty chargeable on a particular fund may be covered by an allowance, *e.g.*, of Settlement Estate Duty paid on a prior death, will not render that fund immune from aggregation.

The following property, when liable to Estate Duty, is nevertheless exempt from aggregation:—

(A) Property in which the deceased never had an interest.

(B) Estates not exceeding £1,000 in value, excluding property settled otherwise than by the will of the deceased.

(C) Works of art, etc., given to the nation.

(D) Similar articles certified by the Treasury to be of national, scientific, historic or artistic interest.

(E) Timber.

(F) Property in respect of which Estate Duty is remitted in the case of persons killed in war.

(G) Settled property on which Estate Duty has been commuted.

(H) Notional sums and settled property, in the case of transfers to companies.

(I) In the case of deaths before the F. A. 1927—property settled by a person who died before the F. A. 1894.

(A) Property in which the deceased never had an interest, although it passes on his death and is liable to Estate Duty, is not to be aggregated with any other property but is to be an estate by itself, and the Estate Duty thereon is to be levied at the proper graduated rate on the principal value thereof (F. A. 1894, s. 4, proviso). For example, if *A* effects and keeps up a policy on his own life for £300, which is absolutely and

irrevocably nominated from its commencement in favour of *B*, the £300, being property in which *A* never had an interest, forms an estate by itself on his death. Estate Duty is payable at 1 per cent., whatever may be the value of the other property passing. If there are several such policies, each is an estate by itself. The proviso would not apply, of course, if *A* acquired an interest in the policy under the will or intestacy of his own nominee.

An "interest" includes for these purposes a contingent interest, even if it fails to take effect (*A.-G.* v. *Pearson*, [1924] 2 K. B. 375). Where, as is usually the case under a nominated policy, the deceased had a contingent beneficial interest on failure of the objects of the nomination, the money is aggregable.

The condition of the proviso is that the deceased *never* had an interest: if he had at some former time an interest which he disposed of, or which ceased, in his lifetime, the property is aggregable although he had no interest in it at his death.

Property falling under this head includes *inter alia* (1) annuities and other interests voluntarily purchased or provided by the deceased and coming into existence at his death, (2) insurances in various provident funds which can become payable only (*e.g.*) to the deceased's widow or children, and (3) land or chattels inalienably settled by Act of Parliament or Royal Grant, where the property chargeable with Estate Duty is *the interest of the successor* (F. A. 1894, s. 5 (5); *Nevill* v. *Inland Revenue Commissioners*, [1924] A. C. 385; pp. 22–23, *supra*). If there are several successors in case (3) the interest of each is an estate by itself. But so far as the successors take, not the land itself, but merely rent-charges thereon, it has been held that s. 5 (5), *supra*, does not apply (*re Abergavenny Settled Estates, Abergavenny* v. *Nevill*, [1926] Ch. 465). A capital sum, representing the redemption price of an annuity settled by Act of

Parliament, is not excluded from aggregation (*re Exmouth's Annuity*, [1925] Ch. 280). The notional sum, on which Estate Duty may be payable by a company under the F. A. 1930, s. 34, is also property in which the deceased never had an interest, but this is the subject of an express exemption ((H), *infra*). *See also,* as to policies, p. 83, *supra.*

(B) As already noted, where the net estate, excluding property settled otherwise than by the will of the deceased does not exceed £1,000, such estate is not to be aggregated with any other property, but is to form an estate by itself (F. A. 1894, s. 16 (3)). The estate not exceeding £1,000 includes not only the deceased's free estate, *i.e.*, that which passes under his will or intestacy, but also all other property liable to Estate Duty passing on his death *except* settled property. To ascertain whether this exemption from aggregation applies, the following property must be taken into account:—

X, the property forming the "estate by itself," including—

(1) The deceased's free property;

(2) Property over which he had and exercised a general power of appointment by his will (*re Magan* (1908), noted at [1922] 2 I. R. 204);

(3) *Donationes mortis causa;*

(4) Gifts *inter vivos,* not being the subject of a settlement;

(5) Policies on the deceased's life which were kept up by him for a donee to whom he had given the policies; and

Y, other unsettled property, each item of which itself is entitled to be treated as an "estate by itself" (whether the £1,000 is exceeded or not) as being property in which the deceased never had an interest, including—

(1) Annuities and other interests provided by the deceased and arising on his death;

(2) Nomination policies and insurances in provident funds in which the deceased had no contingent or other interest at any time.

If the total of *X* and *Y* does not exceed £1,000, *X* is entitled to be treated as an estate by itself and is not aggregable with any other property. Moreover, Legacy Duty and Succession Duty are not payable under the deceased's will or intestacy.

For example: the property passing on *A's* death includes—

	£	s.	d.
X.			
(1) Free estate	200	0	0
(2) Gift made within three years ...	150	0	0
(3) Policy on deceased's life kept up by him for the benefit of a donee	110	0	0
Y.			
(4) Annuity purchased by him for his wife and arising on his death worth	116	0	0
(5) Nomination policy in which the deceased had no contingent or other interest	250	0	0
Total of *X* and *Y* ...	£826	0	0

As the total does not exceed £1,000, the items comprised in *X* form an estate by itself which is not liable to aggregation with any other property. The rate of duty is therefore 1 per cent., and Legacy Duty and Succession Duty are not payable in respect of the free estate, value £200.

The exemption from other duties does not in strictness apply to the policy, but in practice it would probably be treated as applying. In any case the payment of Estate Duty would cover any Succession Duty at 1 per cent. that might otherwise have been chargeable (F. A. 1894, s. 1).

Each of the items in *Y* forms an estate by itself as being property in which the deceased never had an interest. Estate Duty is therefore payable at 1 per cent. on each item.

If the total of *X* and *Y* had exceeded £1,000 and there had been property worth, say, £3,000 passing under the deceased's marriage settlement, the property in *X* would be aggregable therewith; the rate of Estate Duty would be 3 per cent. and there would be no exemption from Legacy Duty or Succession Duty (unless the beneficiaries were widow, husband, or lineal issue). The rates of Estate Duty on the items in *Y* would, however, still be 1 per cent. It is only taken into account for the purpose of ascertaining whether the unsettled property does not exceed £1,000.

Reversionary interests and entailed property are, in strictness, property "settled otherwise than by the will of the deceased," but in practice accountable parties are permitted to treat them, if the values allow, as part of the unsettled estate not exceeding £1,000. If this course is adopted, all the advantages of exclusion from aggregation with other property, and freedom from Legacy Duty and Succession Duty, will follow. If reversions and entailed property are not so treated, they will be fully aggregable *inter se,* and with any other settled property, and however small their value they will not be exempt from the 5 per cent. and 10 per cent. rates of Legacy Duty and Succession Duty unless they come under the exempting provisions of the Acts imposing those duties. The severable share of a deceased joint tenant, devolving by survivorship, is also allowed to be treated as either settled or not settled. This option requires careful consideration, especially where the addition of a reversion or joint property is sufficient to raise the value of the free estate and unsettled property to over £1,000.

Roughly speaking, all other property passing, apart from that referred to in *X* and *Y* above, constitutes property settled otherwise than by the will of the deceased and will not therefore be included in the "estate by itself" not exceeding £1,000. Such other property comprises interests in expectancy, joint property devolving by way of settlement, and entailed property (subject as above); property over which the deceased had, but did not exercise, a general power of appointment; settled annuities (*e.g.*, an annuity purchased by *A* for the joint lives of himself and his wife and for the life of the survivor); property in which the deceased had merely a life interest; and any other property passing which was disposed of by way of settlement by some instrument other than the deceased's will so that it is limited to persons by way of succession. All such property, unless it comes under one or more of the other exceptions, is aggregable whether it is under £1,000 or not.

If the free estate is £1,001 and there is settled property worth £1,000, they are aggregable and each liable to Estate Duty at 3 per cent. The smallness of the margin in such circumstances makes no difference.

(c) Pictures, prints, books, manuscripts, works of art and scientific collections, which appear to the Treasury to be of national, scientific or historic interest, and to be given or bequeathed for national purposes, or to any county council or municipal corporation, and in respect of which the Treasury has remitted the Estate Duty, are not aggregable with any other property for the purpose of determining the rate of Estate Duty (F. A. 1894, s. 15 (2); pp. 263–264, *infra*).

(d) Pictures, prints, books, manuscripts, works of art, scientific collections, and other things not yielding income, which appear to the Treasury to be of national, scientific, historic or artistic interest, are exempt from

all death duties while enjoyed in kind, and, even if they are subsequently sold, are not aggregable with any other property for the purpose of determining the rate of Estate Duty. Where the last death on which the articles passed occurred on or after the 1st August, 1930, the rate of duty on articles which are sold is the rate appropriate to the rest of the estate (F. A. 1930, s. 40). Where the last death occurred before the 1st August, 1930, the rate is that appropriate to the whole exempted collection, as an estate by itself (F. A. 1896, s. 20; F. A. 1910, s. 63).

See also pp. 264–266, *infra*.

(E) Where land includes timber, trees, or underwood, the value thereof is not to be taken into account in estimating the rate of Estate Duty. Estate Duty is payable on such timber as and when it is sold, at the rate due to the principal value of the estate apart from the timber (F. A. 1912, s. 9; pp. 145–148, *infra*).

(F) As will be explained in Chapter IV, property passing more than once owing to deaths caused by the Great War was relieved from Estate Duty on the subsequent death. Further, such property was not liable to aggregation with any other property passing on such subsequent death (Death Duties (Killed in War) Act, 1914, s. 2). This applied whether any property passed to the widow, lineal descendants, lineal ancestors or collaterals of the deceased or not.

Similarly, the first £5,000 on which duty was wholly remitted in the case of persons killed in the war was also not liable to aggregation.

The benefits of these remissions were extended by the F. A. 1921, s. 43, to persons dying after 31st December, 1918, from causes arising out of the then state of disorder in Ireland, and by the F. A. 1924, s. 38, to members of His Majesty's combatant forces dying after 31st August, 1921, in the circumstances mentioned in

the section. This last remission is not, however, to include the relief accorded to property on a second passing by s. 2 of the original Act.

See also pp. 256–261.

(G) Settled property upon which Estate Duty has been commuted in the lifetime of the deceased was formerly considered not to be exempt from aggregation, but it has been decided that although such property passes on the death of the deceased it is not property passing "in respect of which Estate Duty is leviable" within the meaning of s. 4 of the F. A. 1894 (*A.-G.* v. *Howe* (1925), 133 L. T. 801). Such property is not therefore aggregable with the other property passing on the deceased's death for the purpose of determining the rate of duty on the latter.

(H) Where the deceased transferred property to a company, from which he received benefits, and a notional sum of money is consequently deemed to pass on his death, that sum is an estate by itself (F. A. 1930, s. 34 (7)). Apart from the express provision, the sum would, as already suggested, be exempt from aggregation as property in which the deceased never had an interest. Further, where property, in which the deceased had formerly a life interest and which was transferred to a company, is deemed to pass on the death, that property again is an estate by itself (F. A. 1930, s. 35 (3)).

See also pp. 67 and 75.

(I) In the case of deaths before 19th April, 1927, property passing under a disposition made by a person dying before the F. A. 1894, which would have been liable to Estate Duty on the settlor's death if he had died after that Act, forms an estate by itself (F. A. 1900, s. 12 (2), amended by F. A. 1907, s. 16—repealed as regards deaths on or after 19th April, 1927, by F. A. 1927, s. 51—with a saving clause in favour of purchasers

and mortgagees of reversions sold or mortgaged before 11th April, 1927). As regards claims arising before the F. A. 1927, the exception includes practically all property passing under pre-1894 wills and also in certain cases property settled by deed. In ascertaining whether the property "would have been" liable to Estate Duty, only the death should be projected forward, the facts being taken as they stood in 1894 and not at the actual date of death (*A.-G.* v. *Thynne,* [1914] 1 K. B. 351). Real property which has been disentailed and re-settled is regarded as passing for this purpose under the re-settlement, not under the original disposition (*Parr* v. *A.-G.,* [1926] A. C. 239).

Example of Aggregation.

The general operation of the principle of aggregation may now be more practically explained by an example as follows: *A* dies in 1930, and the following properties pass on his death:—

	£	s.	d.
(*a*) His free property, value	460	0	0
(*b*) Insurance money in which he never had an interest	300	0	0
(*c*) An interest in expectancy, value ...	1,400	0	0
(*d*) Absolute gift within three years of death	120	0	0
(*e*) Property comprised in a deed of settlement by *A's* father of which *A* was tenant for life and over which he had, but did not exercise, a general power of appointment	8,000	0	0
Carried forward ...	£10,280	0	0

	£	s.	d.
Brought forward ...	10,280	0	0
(*f*) Property settled by *A* on his marriage	900	0	0
(*g*) Property settled by *A's* uncle on *A's* brother for the life of *A* with remainder on *A's* death to *C*, value	25,000	0	0
(*h*) Personal property settled by *A* on himself for life and then on his daughter and her children. The Estate Duty expectantly payable on this property on *A's* death was commuted and paid in his lifetime, value	1,500	0	0
Total ...	£37,680	0	0

The total value of the whole property is £37,680, and the rate of duty for each property if there were no exceptions would be 12 per cent.

In the first place (*a*), (*b*) and (*d*) constitute property not settled otherwise than by the will of *A*, and as the total value does not exceed £1,000, (*a*) and (*d*) form the "estate by itself not exceeding £1,000" and (although aggregable *inter se*) are not therefore liable to aggregation with any other property. The rate of Estate Duty on each item (*i.e.*, (*a*) and (*d*)) is 2 per cent.

(*b*) is not aggregable, being property in which the deceased never had an interest. It is therefore an estate by itself and the rate is 1 per cent.

(*c*), (*e*) and (*f*) are aggregable, and the total value being £10,300, Estate Duty is payable on each item at 5 per cent. It will be remembered, however, that, if the values allow, an interest in expectancy may be treated as unsettled property forming part of an "estate by itself not exceeding £1,000."

(*g*) is not aggregable, being property in which the deceased never had an interest. The rate on it as an estate by itself is 9 per cent.

(*h*) is not to be brought into aggregation at all.

Value for Estate Duty.

Estate Duty is payable on the *principal value* of the property within the charging provisions (F. A. 1894, s. 1). The *principal value* is defined as the price which, in the opinion of the Commissioners, the property would fetch if sold in the open market at the time of the death of the deceased (F. A. 1894, s. 7 (5)). The price which property *fetches* is the gross sale price, without deduction for the costs of sale. Such price is to be ascertained on the assumption that the property is sold in the open market "in such a manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the property" (*Ellesmere* v. *Inland Revenue Commissioners* (1918), 119 L. T. 568). In the case cited the successors sold as one lot a miscellaneous collection of landed property, not even wholly contiguous. In this form the property was likely to appeal only to a speculator buying for division and re-sale at a profit, and it was in fact divided and re-sold for considerably more than the original price. On these facts the Court upheld the finding of a referee, that the market price was a price based on the separate values of the various parts.

Subject to the provisions of the Acts, the value of any property is to be ascertained by the Commissioners in such manner and by such means as they think fit, and if they are not satisfied with the estimated value they may authorise a person to inspect the property on their behalf and to report to them on its value, in which event the person having the custody or possession of the property must permit such inspection at such reasonable

times as the Commissioners think necessary (F. A. 1894, s. 7 (8)). Where the Commissioners require a valuation to be made by their nominee, the costs of the valuation are to be defrayed by them (s. 7 (9)). Where a valuation is submitted by the accountable parties in support of their estimate, or where a valuation is requested but the valuer is not appointed by the Commissioners, they are not liable for the costs.

In estimating the principal value, no reduction is to be made on the assumption that the whole property is to be placed on the market at one and the same time; but, where it is proved to the Commissioners that the value of the property has been depreciated by reason of the death of the deceased, they are required in fixing the price to take such depreciation into account (F. A. 1910, s. 60 (2)). This provision applies chiefly to cases where the deceased held large blocks of shares in particular companies. Naturally, if the whole block were placed on the market at the time of the death, the market value would decline. The accountable parties are to be expected to act as reasonably prudent business men, who would not throw the whole of a large holding on the market at once, but would realise gradually.

The price or value, at which a testator may have given by his will to a particular person the option to acquire property, is not a test of its market value (*Lord Advocate* v. *Wood's Trustees* (1910), 1 S. L. T. 186).

It may happen in the case of shares in a company, for which there is no Stock Exchange quotation or regular market, that the value, if calculated on the basis of past and prospective dividends would be considerably less than the "break-up value," *i.e.,* the net amount which the shareholder would receive in the event of liquidation. Many such cases will now come within the special valuation provisions of the F. A. 1930, discussed

below; but, even where the deceased had not a controlling interest and the Act does not otherwise apply, the prospect of winding up should be taken into account. Even if the hypothetical purchaser would not be in a position to compel the liquidation, he would naturally assume that the owners of the remaining shares would wish to make the most they could out of their shares and would concur with him in taking the necessary steps to have the assets of the company realised to the best advantage (see *M'Connel's Trustees* v. *Inland Revenue Commissioners,* [1927] S. L. T. 14).

Shares in Privately-controlled Companies.

Where a company is controlled by a single individual, it may be within his power, and to his advantage, to draw his income from the company in the form of director's fees or salary rather than of dividends. Again, if he has no immediate need of the money, it may suit him to accumulate the profits in the form of reserve funds. In the result, while the company is actually a profitable concern, its dividends record may be poor, and the market value of its shares may be depressed in consequence. The F. A. 1930, s. 37, provides that in cases of this kind the shares in such a company (other than preference shares) shall be valued, for Estate Duty purposes, not on the basis of the market price of the shares but by reference to the *value of the total assets of the company.* The section is imperative, and, where it applies, the Commissioners have no power to base the valuation on the market price.

A *share* for this purpose includes any interest whatsoever in a company, by whatever name it is called, analogous to a share, and a *preference share* means a share carrying a dividend at a fixed rate only—excluding a participating preference share (s. 38).

To bring s. 37 into operation, the following conditions must be fulfilled :—

(1) the death occurs on or after the 1st August, 1930, *and*

(2) the company is a company to which the Act applies (*see* p. 53), *and*

(3) either (*a*) the company is chargeable with Estate Duty under s. 34 of the Act (*see* pp. 54–69), or (*b*) the control of the company was immediately before the death in the hands of the deceased.

In case (3) (*a*), the value of the total assets of the company, for the purposes of s. 37, is to be reduced by the notional sum on which duty is payable under s. 34. This is a safeguard against double taxation. If duty is payable under s. 34 on the total value of the assets, any shares (other than preference shares) which pass on the death will be treated as valueless. In practice, case (3) (*b*) is likely to be of much more frequent occurrence.

The *control* of a company is deemed by s. 37 (2) to be in the hands of a person if *either*—

(i) by virtue of the shares which he controls he has control over more than half the voting power of the company, *or*

(ii) he has by virtue of the memorandum or articles or other instrument whatsoever constituting or defining the constitution of the company, the powers of a board of directors or of a governing director, or the right to nominate a majority of the directors or to veto the appointment of a director, or powers of the like nature, *or*

(iii) he has otherwise the right to receive or the power to dispose of more than half of the income of the company.

Cases (i) and (iii) are to some degree converse. The former deals with voting power, independently of beneficial enjoyment; the latter with beneficial enjoyment, independently of voting power. If the capital of the company consists wholly of ordinary shares, and *A* is sole trustee of more than half the shares on trust for *B* for life and then for *C*, the section would come into operation either on the death of *A* (if any of the "minority" shares pass on his death) under case (i), or on the death of *B* under case (iii). But if *X* holds the shares as trustee or nominee for *Y* absolutely, the section would operate on the death of *Y*, under both cases (i) and (iii), and not on the death of *X* (even if any of the "minority" shares pass on that event). Case (ii) envisages powers conferred at the formation of the company, but an agreement entered into subsequently might also be an instrument defining its constitution.

It will be noticed that the definition of *control* differs materially from the definition for Income Tax purposes, in the F. A. 1922, s. 21, as amended by the F. A. 1927, s. 31.

As to the special provisions for ascertaining the value of the total assets of the company, *see* pp. 63–67.

Where the capital of the company, apart from any preference shares, consists only of ordinary shares with equal rights, the final valuation of the shares, "by reference to the value" of the assets, will be a matter of simple division. In other cases, *e.g.*, where there are ordinary and deferred shares, allowance must obviously be made for their respective rights, but there are no express provisions on the point.

For the purpose of carrying s. 37 into effect, the Commissioners are empowered to require any company to which the Act applies to furnish balance sheets and other particulars, and there are penalties for failure to comply (s. 36 (4); pp. 76–77, *supra*).

Section 37 does not apply to shares which have within twelve months of the death been the subject of dealings on a recognised stock exchange in the United Kingdom (*i.e.*, Great Britain and Northern Ireland), or have been quoted in the official list of such a stock exchange (sub-s. (3)).

As mentioned on p. 134, the capital assets of a company are a relevant factor in valuing unquoted shares, even where s. 37 does not apply.

Restrictions on Transfer.

Where the articles of a private company contain restrictions on the transfer of shares, such as an option for the other members of the company to purchase shares at par before they may be sold to an outsider, the principal value of the shares, within the meaning of the F. A. 1894, s. 7 (5), is the price which would be given on the open market, on terms that the purchaser should be duly registered as holder of the shares, but that he in turn would then hold them subject to the articles, including the restriction on any further alienation—in other words, what a purchaser would pay to stand in the deceased's shoes (*Salvesen's Trustees* v. *Commissioners of Inland Revenue*, [1930] S. L. T. 387, following *A.-G.* (*I.*) v. *Jameson*, [1905] 2 I. R. 218).

Where, however, executors are *bound* to sell the deceased's holding at a "fair value" or "fixed price" in accordance with the articles of association of the company, that figure will as a general rule represent the value for Estate Duty.

The value of property passing on a death is not affected by any circumstances, personal to the deceased, by reason of which he was, or his representatives are, in fact unable for the time being to sell. Thus where a German national, domiciled in Germany, died there in 1915, possessed of securities in this country which

were vested in the Public Trustee as custodian, the "principal value" of the securities was held to be the ordinary market price of similar securities (*re Aschrott, Clifton* v. *Strauss,* [1927] 1 Ch. 313).

Interests in Expectancy.

Where the deceased was entitled to an interest in expectancy it is necessary in all cases (except where the estate apart from the reversion does not exceed £1,000) to ascertain its value, even where it is not intended to pay the duty until the reversion falls into possession, so that such value may be aggregated with the rest of the estate for the purposes of ascertaining the correct rate of duty on the latter.

The duty may be paid in respect of an interest in expectancy either with the duty on the rest of the estate or when the interest falls into possession, and if the payment is postponed, then—

(*a*) For the purpose of determining the rate of Estate Duty on the rest of the estate the value of the interest is to be its value at the date of death, and

(*b*) The rate of Estate Duty on the interest when it falls into possession is to be calculated according to its value when it falls into possession together with the rest of the estate as previously ascertained (F. A. 1894, s. 7 (6), and *re Eyre,* [1907] 1 K. B. 331).

On taking out the grant, the executors have to elect whether they will pay Estate Duty at once on the reversionary interest or when it falls into possession. If they elect to pay at once they can deduct the value of the life interest or life interests upon which the property is expectant and the liability to Estate Duty is disposed of. But if they decide to defer payment, then the reversionary value of the interest must still be

aggregated with the rest of the estate to obtain the rate of duty on the latter; and when the interest falls into possession, further Estate Duty is payable on the then principal value of the property in possession without any deduction. The rate of duty is ascertained by the aggregation of such value with the value of the rest of the estate as previously ascertained. It may happen, therefore, that where payment is deferred, a higher rate of duty becomes payable on the reversionary property than on the rest of the estate. For example: if the value of the rest of the estate were £4,800 and the value of the reversion at the death of the deceased £150, the rate of duty on the £4,800 would be 3 per cent. The value of the reversionary property when it falls into possession is, however, £250, and this sum added to the rest of the estate brings the aggregated estate to over £5,000. The rate of duty on the reversionary property would therefore be 4 per cent., while that on the rest of the estate remains at 3 per cent.

It should be remembered that a reversionary interest is regarded as property settled otherwise than by the will of the deceased, and therefore where the rest of the estate does not exceed £1,000 it is not aggregable with the reversionary interest. The reversion would, however, be aggregable with any other aggregable property passing on the death: thus, reversion £500, rest of estate £600, other settled property £850. The reversion and the settled property, being aggregable, are liable to Estate Duty at 3 per cent. The rest of the estate is an estate by itself and not aggregable with any other property, and the rate of Estate Duty is 2 per cent. As already explained, however, the accountable parties may, if they find it more advantageous, and the values permit, treat the reversion as not settled and as part of the *estate by itself not exceeding* £1,000. In that case it would not, of course,

be aggregable with any other settled property, and would also gain exemption from Legacy Duty and Succession Duty.

The option as to payment of duty on an interest in expectancy must be exercised once and for all at the time the grant is taken out, but until the grant is applied for, the election can be made even though the person upon whose life the interest depended has died. For example: *A* died in April, 1930, entitled to a reversionary interest expectant on the death of *B*, aged sixty. *B* died in October, 1930, before a grant of representation to *A's* estate had been taken out. *A's* executors can still elect to pay duty on the reversionary value notwithstanding *B's* death: for until they file the Inland Revenue Affidavit leading to the grant of representation they cannot be said to have exercised their option. They are therefore entitled to account for Estate Duty on the reversionary value at *A's* death calculated on the basis of *B's then* expectation of life and not merely on the period for which he actually survived *A*. Interest on the duty is in such a case chargeable from the death of *A*.

Where the executors elect to defer payment and afterwards wish to pay the duty before the reversion has fallen into possession—as where a sale has taken place—payment can only be made on the basis that the duty is commuted. In such cases application should be made to the Commissioners for permission to commute the duty, and this will in general be allowed if the life tenant is in ordinarily good health (F. A. 1894, s. 12). The duty is assessed on the value in possession and is discounted on a 4 per cent. basis for the life of the life tenant. The full discount would only be allowed if the tenant for life were in ordinarily good health. If he were not, or if the life interest might terminate in certain events earlier, the allowance would be proportionately reduced or the

commutation might be refused (*see also* pp. 161–163 and 309–310). The practice of basing the commutation on the value in possession is followed even though the reversion has been sold, unless the circumstances are exceptional, as, for instance, in the case of a contingent interest the value of which can best be determined by a sale.

Where the deceased was life tenant of a settled fund and also entitled to a share of the capital immediately expectant on his own death, such share should be treated for all purposes as part of his free estate.

Where the property itself passes on the deceased's death, and, subject to an intervening life interest, becomes part of the deceased's free estate, Estate Duty is payable on the capital value at once under the original disposition. For instance: property is settled on the deceased for life, then on his wife for life (who survives), and then in default of children (which happens) on the deceased absolutely. Here the deceased is entitled to an absolute reversion on the death of his wife, but the property itself passes under the settlement on his death. Estate Duty is therefore payable on the principal value of the property under the main title, and that payment covers the liability to Estate Duty of the reversion as an asset in the deceased's own estate. The *corpus* of the property *includes* the reversion, and Estate Duty is not leviable more than once in respect of any property on the same death (F. A. 1894, s. 7 (10)).

Where the interest of a deceased reversioner is liable to be defeated by the exercise of an over-riding power of appointment it may, for the purpose of Estate Duty, be treated as of no value in his estate unless the power has been irrevocably exercised in favour of the reversioner, or has been released, or cannot be exercised owing to mental or other incapacity, or the deceased reversioner is the only object of the power and therefore has in effect an indefeasible interest.

Where the deceased is entitled to property on the determination of a lease, such property is not regarded as a reversionary interest (F. A. 1894, s. 22 (1) (*j*)), nor is a policy on the life of another person. The duty on such properties is payable at once on their market values at the date of death.

Agricultural Property.

The value of real or heritable property should include all appurtenances and ancillary rights, such as mines and minerals, and sporting rights. But timber, as explained below, is treated separately.

Formerly, the value for Estate Duty of purely agricultural property (where no part of the principal value was due to the expectation of an increased income therefrom) was limited to twenty-five times the gross property tax assessment after making the usual deductions and also deducting expenses of management not exceeding 5 per cent. (F. A. 1894, proviso to s. 7 (5)). This provision was, however, abolished by the F. A. 1910, s. 60 (1), except in the case of the free estate not exceeding £1,000 in value (F. A. 1910, s. 61 (1)). Estate Duty is therefore payable on the full market value of agricultural property, except that where it includes labourers' cottages which have a special value as country cottages for townspeople and others, no account is to be taken of any such additional value (F. A. 1911, s. 18). It will be observed that the benefit of the proviso to s. 7 (5) of the F. A. 1894, is preserved as to small estates, so that where the net value of deceased's free estate is, say, £1,030, including real estate which is purely agricultural, and which if valued in accordance with the proviso would reduce the value of the estate to under £1,000, the accountable parties could claim to pay Estate Duty at 2 per cent. only, and they would also be entitled to the other benefits conferred on free estates not exceeding

£1,000. The expression "agricultural property" means agricultural land, pasture and woodland, and also includes such cottages, farm buildings, farm houses and mansion house (together with the lands occupied therewith) as are of a character appropriate to the property (F. A. 1894, s. 22 (1) (*g*)). It does not include any land that has a prospective value for building, mining, quarrying, or other special purpose, although at the moment it is being used only for agricultural purposes.

A further benefit in relief of agricultural property (as defined above) passing on or after 30th June, 1925, was introduced by the F. A. 1925, s. 23. The effect is that the purely agricultural value of such property is exempted from the additional rates of duty imposed since 1919. The relief applies both to (*a*) agricultural property, of which no part of the principal value is due to the expectation of an increased income from such property (*cf.* proviso to s. 7 (5) of the F. A. 1894), and also to (*b*) agricultural property which has such an expectation, as, for instance, a prospective value for building, mining, quarrying or other special purpose. In both cases Estate Duty is only to be paid on the agricultural value at the rates previously in force, viz., those in the 3rd Schedule to the F. A. 1919. But as regards property (*b*), *i.e.*, where the principal value is greater than the purely agricultural value, it will be necessary to ascertain—

(1) The purely agricultural value, which is defined as the value the property would bear if it were subject to a perpetual covenant prohibiting its use otherwise than as agricultural property, less the value of any timber, trees, wood or underwood; and

(2) The "excess principal value," which is the difference between the principal value (*i.e.*, full market value) and the agricultural value.

Estate Duty is payable on (1) at the rates previously in force and on (2) at the rates in the ordinary current scale.

If the property is subject to a properly deductible mortgage, debt or incumbrance an apportionment is to be made between the two values mentioned above.

The F. A. 1925, s. 23, has no application to shares in a company which holds agricultural property, but the benefit is conceded where the property is subject to a trust for sale and also where agricultural property is settled by Act of Parliament or Royal Grant and the value for Estate Duty has to be ascertained under s. 5 (5) of the F. A. 1894.

It will be observed that the agricultural value is not to include the value of any timber, etc., growing thereon, and therefore where such timber is sold the Estate Duty payable in respect thereof is chargeable at the ordinary rates in force at the time of the last death.

Timber.

Where an estate includes land on which timber, trees, wood, or underwood are growing, the value of such timber, etc., is not to be taken into account in estimating the principal value of the estate or the rate of Estate Duty, and Estate Duty is not to be payable thereon, but is to be paid from time to time at the rate appropriate to the principal value of the estate, on the net moneys, after deducting all necessary outgoings since the death, received from the sale of such timber, trees, or wood when felled or cut during the period which may elapse until the land, on the death of some other person, again becomes liable, or would but for this provision have become liable, to Estate Duty. The owners or trustees are required to account for the duty as and when the moneys are received, with interest at 4 per cent. from the date of receipt. But if at any time the timber is sold unfelled, either with or apart from the land, Estate

Duty is payable on the principal value thereof at the date of death, after deducting any Estate Duty paid in respect of timber since that date. (F. A. 1910, s. 61 (5), amended by F. A. 1912, s. 9, and, as to the rate of interest, F. A. 1919, s. 30.)

In practice the principal value of the timber, trees and wood, as at the last death, is treated as the maximum amount on which Estate Duty is to be charged in respect of all sales of timber felled and/or unfelled. If that limit is reached, any further sale moneys are free of duty until the property has passed on another death.

The effect is that where an estate includes timber, the Estate Duty is payable from time to time on the proceeds of sale of timber, trees, or wood, when felled or cut, as and when sales are effected, provided that the aggregate amount on which duty is paid from time to time does not exceed the principal value of all the timber as at the death of the deceased. But if the timber is sold unfelled, either with or apart from the land, Estate Duty is then payable on the principal value at the death, subject to an allowance in respect of any Estate Duty paid on the proceeds of felled timber since then. Where the sale of *unfelled* timber is a partial one, duty is payable, not on the net proceeds, but on the proportion of the total principal value of the timber at the date of death which the sold part bears to the whole. In the result, it would seem that where the timber as a whole is sold, the natural increase in value since death escapes taxation. On the other hand, if it is sold for less than the principal value at the death, duty must still be paid on that value. No duty is payable in respect of timber cut for use on the estate. The *rate* of Estate Duty is ascertained without regard to the value of the timber, etc.

Only the value of the timber as timber is considered to be affected by these provisions. The "amenity value" is not excluded from the value of the estate.

The *deceased* for the present purposes need not have been an owner or tenant for life in possession: he may have been a reversioner (*cf. A.-G.* v. *Dodington*, [1897] 2 Q. B. 373, and *Inland Revenue Commissioners* v. *Priestley*, [1901] A. C. 208). If the estate was settled by the will of *A* on *B* for life with remainder to *C* in fee simple, the principal value and rate are ascertained in the first place with reference to *A's* death, but if *C* then dies in *B's* lifetime they must be ascertained thenceforward, until another death occurs, with reference to *C's* death.

Necessary outgoings (which should not in any case exceed 25 per cent. of the gross proceeds of sale) include expenses of selling, felling and carting, restoring fences, ditches, gates, etc., if borne by the vendor; expenses of forestry; expenses of replanting in place of timber sold and felled on a timber estate since the last death; but not rates, as woodlands are only assessed for rates on the land in its natural and unimproved state or in respect of its value for sporting or other special purposes or for underwood (see *Westmorland* v. *Southwick and Oundle* (1877), 36 L. T. 108); nor land tax, tithe, chief rents, rent or insurance.

The usual practice in the case of a timber estate is to render annual accounts, showing the gross receipts month by month, but the outgoings may be shown for the year as a whole. The outgoings are then set off against the receipts in the *earlier* months. If outgoings in a particular year exceed the receipts, the deficiency may be carried forward. There is no statutory provision for commuting Estate Duty in respect of timber, but payment may be made if desired upon the full value at the death.

Timber does not form part of the "agricultural value" of property for the purpose of the F. A. 1925, s. 23.

No duty is chargeable on moneys realised from the sales of underwood whether cut or not. Underwood has been defined as a species of wood which grows expeditiously, and sends up many shoots from one stool, the root remaining perfect from which the shoots are cut, and producing new shoots, and so yielding a succession of profits, and then only when treated as underwood (*R.* v. *Ferrybridge* (1823), 1 B. & C. 375).

Deductions.

From the gross value of an estate deduction may be taken, under the F. A. 1894, s. 7 (1), for reasonable funeral expenses and for debts and incumbrances, but an allowance cannot be made—

(*a*) for debts incurred or incumbrances created by the deceased unless they were incurred or created *bonâ fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, or

(*b*) for any debt in respect whereof there is a right of reimbursement from some other estate or person, unless such reimbursement cannot be obtained, or

(*c*) more than once for the same debt or incumbrance charged upon different portions of the estate.

Incumbrances include mortgages and terminable charges (F. A. 1894, s. 22 (1) (*k*)), and, in Scotland, heritable securities or other debts or payments secured upon heritage (s. 23 (10)).

Marriage is not consideration in money or money's worth, and even when both spouses bring property into settlement, the marriage, and not the property brought in by the other party, is the consideration on each side (*Lord Advocate* v. *Sidgwick* (1877), 4 Rett. 815). Thus a capital sum or an annuity, covenanted by the deceased in his own or his child's marriage settlement to be paid

on his death is not a permissible deduction against his estate (*H.M. Advocate* v. *Alexander's Trustees* (1905), 7 Fra. 367). As to the *incidence* of the Estate Duty in such cases, *see* pp. 218–219, *infra*.

A sum covenanted to be paid by deceased under a deed of separation between him and his wife is, however, regarded as created for full money consideration, and is therefore deductible, but not so as regards any sum or annuity agreed to be paid on the termination of an irregular connection, unless perhaps so far as the deceased was under any legal liability with regard to any issue of the union.

No deduction can be taken for debts owing under bonds granted by the deceased for charitable purposes, although payment is legally due and enforceable, nor can the deceased in such a case be regarded as a mere trustee of the money payable (*H.M. Advocate* v. *Gunning's Trustees* (1902), 39 S. L. R. 534). *A fortiori* there can be no allowance in respect of a promised subscription or gift which is not enforceable.

The problems presented by this provision may be compared with those which arise in relation to the *exemption* of property passing by reason of a purchase for full consideration (pp. 238–240, *infra*).

Even if full consideration is established, it must be shown further to have been wholly for the deceased's own use and benefit. A debt would not be disallowed by reason merely that it represented the price of something the deceased had bought to use as a gift (though the gift itself might be taxable as such). But if the deceased has voluntarily made himself liable for the price of something purchased by another, or has otherwise assumed responsibility for a pre-existing debt, the consideration *primâ facie* was not for his use or benefit, and no deduction can be taken. The discharge of legitim in Scotland is not for the use or benefit of a

father (*H.M. Advocate* v. *Warrender's Trustees* (1906), 8 Fra. 371), but the consent of subsequent heirs *is* for the use or benefit of an heir of entail who thereby acquires the fee simple of the entailed estates (*A.-G.* v. *Richmond and Gordon,* [1909] A. C. 466).

The latter decision disclosed a weakness in the Acts. For example, if property were settled on a father for life with remainder to his only son, the father when in failing health might purchase the son's reversion at a fair price (which would be nearly the full value of the property), giving a promissory note or a mortgage for the amount. In the result the son would get all the father's property, and the Revenue would lose by the deduction. It is now provided that where any debt or incumbrance has been incurred or created for the purpose of the acquisition or extinction of an interest in expectancy in any property passing or deemed to pass on a death, and the person whose interest is acquired or extinguished becomes entitled, under a disposition by the deceased or by devolution from him, to any interest in the same property, no allowance shall be made in respect of the debt or incumbrance; and if part only was incurred or created for such purpose, or if the original reversioner becomes entitled to an interest in part only of the property, a *proportion* of the debt or incumbrance is disallowed (F. A. 1910, s. 57).

Where an incumbrance was created not by the deceased but by a predecessor in title, the amount or value is *primâ facie* deductible, without reference to the question whether the predecessor received consideration.

Where the deceased guarantees a debt, the amount payable under the guarantee may not be deducted unless the liability has actually ripened and recoupment cannot be obtained from the principal debtor. Thus, if the deceased has during his lifetime guaranteed an overdraft on a bank to his son and the son becomes insolvent

so that the deceased's estate is called upon to pay, an allowance can be claimed. In order to give effect to s. 7 (1) of the F. A. 1894 as a whole, the Revenue treats guarantee debts as governed simply by these conditions, without reference to the question whether the deceased received full pecuniary consideration. The latter requirement would rule out almost all guarantee debts.

The F. A. 1894, s. 7 (1), contains a further provision that any debt or incumbrance for which an allowance is made shall be deducted from the value of the land or other subjects of property liable thereto. This is taken to mean *primarily* liable in the due course of administration, so that deduction cannot be taken against the free personal estate (on which the Estate Duty bears interest from the death) for a mortgage debt charged on the free real estate (on which the Estate Duty bears no interest for the first year)—unless the security is deficient. *A fortiori* the deficiency, where the free estate is insolvent, cannot be allowed against the value of, say, settled property in which the deceased had a life interest. It makes no difference that the beneficiaries may voluntarily pay the debts. *Funeral expenses* may apparently be deducted, if occasion requires, from property other than the free estate.

In the case of the death of a married woman, no deduction can be made in respect of her unpaid Income Tax or Sur Tax unless she was living apart from her husband or was separately assessed. The husband is solely liable and has no right of indemnity against his wife or her estate (*re Ward, Harrison* v. *Ward,* [1922] 1 Ch. 517). Nor is deduction justified in respect of necessaries, *e.g.,* medical attendance or clothing which it was the husband's duty to provide, unless it can be demonstrated either that she had in fact made herself primarily liable for them or that she was liable

though not primarily and the husband was unable to pay.

As to deductions which may be taken in the case of small estates in respect of which the fixed duties of 30s. or 50s. are to be paid, *see* pp. 120–121.

Mortgages on Settled Property.

The existence of provisions for an allowance in respect of incumbrances serves to show that the whole *corpus* of the property affected, and not merely a right of redemption or residual interest, is to be regarded as *passing*. But the operation of s. 7 (1) of the F. A. 1894 is confined to *unsettled* property: in the case of settled property it is only the right of redemption or residual interest that passes (*Cowley* v. *Inland Revenue Commissioners*, [1899] A. C. 198, followed in *De Freyne* v. *Inland Revenue Commissioners*, [1916] 2 I. R. 456; *contra, Colquhoun's Trustees* v. *Colquhoun's Trustee,* [1913] S. C. 874). At first sight the question whether Blackacre passes, subject to a mortgage for £1,000, or the equity of redemption in Blackacre passes, is a distinction without a difference. The difference arises where the mortgage could not be allowed *as a deduction,* for instance, where it was created by the deceased otherwise than for full consideration for his own use and benefit. In the *Cowley Case*, *A* (tenant for life) and *B* (remainderman) joined in disentailing the settled property, which they then mortgaged in fee simple, the bulk of the borrowed money being paid to or on behalf of *A* and the balance to or for *B*. They then made a re-settlement, charging the estates with an annuity to *B* during the life of *A*, and subject thereto on *A* for life, with remainder to *B* for life and remainders over. On the death of *A* it was held that only the equity of redemption passed. To the extent of the mortgage debt, the property had been

taken out of settlement. In effect, therefore, the whole of the mortgage fell to be deducted, although (at any rate so far as *B* received the borrowed money) it could clearly not have been allowed under the provisions of s. 7 (1).

Where, however, a tenant for life and remaindermen joined in mortgaging the settled property, solely for the benefit of the latter, and the tenant for life was indemnified against the mortgage debt and interest, so that he received the full income to which he was entitled under the settlement, it was held that regard must be had to the substance and not to the form of the transaction, and that Estate Duty was payable on the life tenant's death on the *corpus* of the settled property without deduction for the mortgage (*A.-G.* v. *Montagu,* [1904] A. C. 316).

No dealing with property after it has been settled can defeat the charge of *Succession Duty,* which may consequently be payable, to the extent to which the property escapes Estate Duty by the allowance of a mortgage, in cases where it is not payable in respect of the property actually bearing Estate Duty. Moreover the higher rates may be chargeable (pp. 448–451, *infra*).

Allowance of Terminable Annuities.

Where the deceased's free real or leasehold property is subject to a terminable annuity charged thereon by a predecessor in title, or by the deceased himself for full consideration in money or money's worth, the actuarial value of such annuity is allowed. No deduction can, of course, be taken for an annuity charged by the deceased on his free estate during his life, unless created for full consideration in money or money's worth, nor may any deduction be taken for an annuity he has voluntarily agreed to pay (*H.M. Advocate* v. *Alexander's Trustees* (1905), 7 Fra. 367).

In the case of settled property the question is not *what is to be deducted,* but *how much of the property passes.* In *Cowley* v. *Inland Revenue Commissioners* (*supra*), where the latter test was applied with reference to the mortgage, it was held that there could be no allowance in respect of the annuity to which the successor had been entitled during the deceased's lifetime, on the ground, in effect, that the successor took the settled property free from the annuity. This part of the decision is not now followed. The view adopted by the Revenue is that the "slice" of the property producing the annuity in such circumstances *does not pass* on the death: the successor already has it. This is in accordance with the principle laid down in *re Townsend* (p. 15, *supra*). The "slice" deduction is given where settled property, whether real or personal, passes on the death of a tenant for life either—

(*a*) subject to a continuing annuity, irrespective of whether the annuitant is the person who then succeeds to the property (*cf. re Tattersall, Public Trustee* v. *Tattersall,* [1918] 2 Ch. 243), or

(*b*) to a person who was entitled prior to the death to an annuity which terminates on that event, provided that the annuity was a charge on the property itself or was payable out of the income of the property itself in priority to the interest of the tenant for life (*cf. A.-G.* v. *Glossop,* [1907] 1 K. B. 163).

No allowance is made where the annuity is merely a charge on the interest of the tenant for life and the property itself is unaffected thereby. The "slice" is calculated in the same manner as for charging duty on the cesser of an annuity (pp. 24–25, *supra*).

Where annuities, and future capital sums practically equivalent to the annuity "slices," had been charged on

property prior to its being put into settlement, and the settled property passed on a death, subject to the charges, it was held in Ireland that the appropriate deduction was not a "slice," but the actuarial value of the annuities plus the actuarial value of the future capital sums (*De Freyne* v. *Inland Revenue Commissioners*, [1916] 2 I. R. 456). The decision is followed, but only where the facts are similar in all material respects.

Debts to Persons resident outside Great Britain.

No allowance can be made in the first instance for debts due to persons resident out of Great Britain (unless contracted to be paid in Great Britain or charged on property in Great Britain) except as against personal property of the deceased situate outside Great Britain; and no repayment of Estate Duty can be made in respect of such debts except to the extent to which it is shown, to the satisfaction of the Commissioners, that the personal property of the deceased, in the country where the creditor resides, is insufficient for the payment (F. A. 1894, s. 7 (2)). These provisions (which apply whether the deceased was domiciled in this country or not) are purely negative, and do not authorise any deduction, even against property abroad, in respect of a debt disallowed by s. 7 (1). Deduction cannot be taken against the estate in Great Britain in the Inland Revenue Affidavit ("in the first instance") even if it is already quite clear that the estate abroad is deficient. For example, the property passing on the death consists wholly of free personalty—£5,000 in England and £2,000 in France. The deceased owed £1,000 to persons resident here and £3,000 to persons resident in France. Estate Duty must be paid on the Inland Revenue Affidavit on £4,000 (the £5,000 less the £1,000—the net value of the foreign property being nil). Subsequently the

estate can be adjusted to £3,000 net and Estate Duty recovered by Corrective Affidavit. The example is not affected by the deceased's domicile. Where, however, the deceased had *no* property abroad, deduction in respect of foreign debts may in practice be allowed in the first instance, by way of concession, to save the trouble of adjustment later. If the estate includes immoveable personal property, such as leaseholds, in the creditors' country, that property, though not itself liable to British Estate Duty, must be shown to be exhausted before there can be any *repayment*. This point may arise (1) where the moveable property abroad is deficient and it is desired to bring in the deficiency against the property in Great Britain, or (2) where further debts have come to light and it is desired to deduct them from the net value of the non-British property as previously sworn.

Real property outside Great Britain need not be taken into account, except that it should be regarded as bearing the burden of any debts actually charged upon it.

Other Deductions against Property outside Great Britain.

Where the Commissioners are satisfied that any additional expense in administering or realising property has been incurred by reason of the property being situate outside Great Britain, an allowance not exceeding 5 per cent. may be made from the value of the property on account of such expense (F. A. 1894, s. 7 (3)). The general rule is that expenses of administration are not deductible for the purpose of Estate Duty, and this exception relates only to the *extra* expense, *i.e.*, the difference between the probable expenses of administration if the property had been in this country and the expenses actually incurred.

Where British Estate Duty is payable on property situate in a *foreign* country, and the Commissioners are satisfied that by reason of the death any duty is payable in that country in respect of the property, the amount of such duty is to be allowed from the value of such property (F. A. 1894, s. 7 (4)). Unlike the two preceding sub-sections, which relate to all property outside Great Britain (*e.g.*, to property in Ireland or the Isle of Man), this provision does not in strictness apply to duty payable in any part of H.M. Dominions. The scheme of the Act is that duties payable in the colonies, etc., shall be allowed, under reciprocal arrangements, against the British Estate Duty attributable to the property situate there, and not merely against the value of the property (F. A. 1894, s. 20; pp. 273-276, *infra*). Any duty payable in a British colony, etc., to which this scheme has not been applied, is, however, allowed in practice as a deduction from the value of the property, as in the case of a foreign country. A similar allowance has been conceded in the case of shares in non-British companies, which owing to their being registered on a British register are considered in English law to be assets of Great Britain, but are deemed by the law of the particular colony where the company carries on business to be situate in that colony, and may not be transferred until duty in that colony has been paid (*see* pp. 102-103). Apart from this one exceptional case, no non-British duty can in any circumstances be deducted, for the purposes of the British death duties, against property in Great Britain.

Time for Payment: Interest.

Estate Duty is due—

(*a*) in respect of personal property (other than annuities chargeable under the F. A. 1894, s. 2 (1) (*d*))—on the delivery of the Inland Revenue Affidavit, Inventory or account, or on

the expiration of six months from the death (F. A. 1894, s. 6 (2), (4) and (7)),

(*b*) in respect of real property which is sold—on the completion of the sale (F. A. 1894, s. 6 (8)),

(*c*) in respect of real or leasehold property in England or Wales, in connection with deaths after 1925, where a conveyance of a legal estate by way of sale, exchange or legal mortgage, or a disposition of a registered estate by way of sale, exchange or charge, over-rides the charge for death duties—on such conveyance or disposition (L. P. A. 1925, s. 17 (3); L. R. A. 1925, s. 73 (6)), and

(*d*) in respect of real property in any other circumstances, and the annuities mentioned at (*a*)—on the expiration of twelve months from the death (F. A. 1894, s. 6 (8); F. A. 1896, s. 16).

In the cases at (*d*), the duty may be paid by instalments.

Interest at 4 per cent. (without deduction for Income Tax) is chargeable on the duty in case (*a*) as from the death and in the other cases as from the date when the duty, or the first instalment thereof, becomes due (Acts as cited above, also F. A. 1896, s. 18 (1), and F. A. 1919, s. 30). If real property is sold, etc., interest is charged from the date of the transaction, even if the duty is paid within a year of the death. No discount can be given for voluntary payment within the year. As regards leasehold property, interest is always chargeable as from the death, and the effect of the Acts of 1925 is simply that the duty itself may become due sooner than in case (*a*).

The fixed Estate Duties of 30s. and 50s. (pp. 119–120), interests in expectancy (pp. 139–143), timber (pp. 145–148), and certain works of art, etc., which are taxable only when sold (pp. 264–266), are the subject of special rules.

Instalments.

In the case of real estate the accountable parties have an option of payment by instalments: viz., by eight equal yearly instalments or by sixteen equal half-yearly instalments, the first of which is due at the end of one year from the death, and after that date interest at 4 per cent. is payable on the duty for the time being unpaid, but such duty may be paid at any time with interest to the date of payment (F. A. 1894, s. 6 (8)). If the property is sold, etc., as mentioned at (*b*) or (*c*) above, the option terminates and all unpaid duty is immediately payable with interest from the happening of the event.

Should the owner die before all instalments are paid, the unpaid instalments are still payable and are a charge on the property in the hands of the successor. The same rule applies in the case of land inalienably settled by Act of Parliament or Royal Grant, except that the unpaid instalments are due from the successor's estate and are not a charge on the property unless the option given by s. 44 of the F. A. 1922 has been exercised.

Where Estate Duty is payable under the F. A. 1894, s. 2 (1) (*d*), in respect of an annuity or other definite annual sum, whether terminable or perpetual, provided by the deceased, the duty may be paid by four equal yearly instalments, the first of which is due at the end of twelve months from the deceased's death, and after that date interest on the unpaid duty is payable with each instalment (F. A. 1896, s. 16). The duty unpaid may be paid at any time. This provision deals with annual sums arising on the deceased's death where the duty is paid on the value of the interest *arising*. It does not refer to cases of Estate Duty chargeable on annuities *ceasing* on the deceased's death, where duty is taken on a "slice" of the property sufficient to pay the annuity.

Transfer of Property in payment of Duty.

The Commissioners may, if they think fit, on the application of any person liable to pay Estate Duty or Settlement Estate Duty on real and leasehold property, accept in satisfaction of the whole or part of such duty such part of the property as may be agreed upon (F. A. 1910, s. 56 (1)). No Stamp Duty is to be payable on the transfer of such property (*ibid.*, sub-s. (2)) and the Commissioners are to deal with it in such manner as Parliament may determine (*ibid.*, sub-s. (3)). It is entirely within the discretion of the Commissioners as to whether they will themselves accept property under this provision. They may, however, act as intermediaries for any other public department or authority which may desire to purchase.

There are also provisions for payment of duty by the transfer of Victory Bonds and certain other Government securities (*see* pp. 318–321).

Corrections.

Should it be found that too little duty has been paid, owing either to assets being omitted from the Inland Revenue Affidavit or account, or to the value of any assets being under-estimated, the matter should be corrected by a Corrective Affidavit or account (F. A. 1894, s. 8 (7)). Similarly, if too much duty has been paid by reason of assets being wrongly included or over-estimated (F. A. 1894, s. 8 (12)). In the latter case the appropriate amount of duty is returned with the interest actually paid thereon. Duty is not considered to earn interest in the hands of the Revenue, and therefore in cases of return of duty it is not allowed for the period it has been in hand except where the over-payment was due to an over-valuation by the Commissioners (*ibid.*) or where the Court orders the Commissioners

to pay interest on duty repayable (F. A. 1894, s. 10 (3), acted on in *Sprot's Trustees* v. *Lord Advocate* (1902), 10 S. L. T. 452). The expression Inland Revenue Affidavit includes a Scottish Inventory and Additional Inventory (F. A. 1894, s. 23 (5)). Where Estate Duty is a charge on the property in respect of which it has been paid, and a certificate to that effect has been issued, any repayment is made only to the person producing such certificate (F. A. 1894, s. 9 (2) and (3)). There is no limit of time for repayments.

Commutations.

The Commissioners are empowered at their discretion to commute the Estate Duty in respect of an interest in expectancy and in arriving at the sum payable they are required to set a present value on the duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty, interest being reckoned at 4 per cent. (F. A. 1894, s. 12; F. A. 1919, s. 30). The case of reversionary interests has already been dealt with (pp. 141–142), but the question also arises when settled property is being taken out of settlement or dealt with in such a manner as to render it expedient to free it from future claims for duty.

The Commissioners are under no obligation to commute, and in view of the decision that property, in respect of which the Estate Duty has been commuted, is not aggregable with the property ultimately passing on the death, the balance of advantage is usually against the Revenue (*A.-G.* v. *Howe* (1925), 133 L. T. 801). Except as regards reversionary interests, therefore, a commutation is agreed upon only where it is shown to be reasonably necessary for the purpose of some intended transaction and where refusal would entail serious inconvenience—also perhaps where it might be difficult to collect the duty when the claim matured.

For this reason it may be of service to indicate some of the cases in which commutation is *not* required.

Property is not chargeable with Estate Duty merely on the ground that it has been settled on a person for life: it must actually pass or be deemed to pass on a death. If it is sold in the life tenant's lifetime, it presumably will not pass on his death and will not be taxable in that connection. If the proceeds of sale are held or re-invested on the original trusts, such proceeds or new investments alone are presumptively chargeable, and commutation is unnecessary either for the protection of the purchaser or for the convenience of the other parties (*cf. A.-G.* v. *Smith-Marriott,* [1899] 2 Q. B. 595). If the property is divided up between the beneficiaries, in fair proportion to the values of their respective interests, the presumptive liability to Estate Duty disappears altogether (p. 51, *supra*), so that commutation is again unnecessary. There remains the possibility that the transaction involves a *gift* or *surrender* by one or more of the interested parties which may attract Estate Duty on his death within three years, or even outside that period if he makes some reservation or receives some collateral benefit (pp. 39–52, *supra*). Even in this case the purchaser will not be concerned unless he has notice of the material facts, which he will probably not have if title is made under a trust for sale or under the Settled Land Acts. Finally, in cases to which the English Property Acts of 1925 apply, the presumptive liability can be over-reached in favour of a purchaser in practically any circumstances. (*See,* as to the protection of purchasers, pp. 196–200, *infra*.) But whatever the purchaser's position, the Commissioners will not normally commute Estate Duty contingently payable in the event of a person's death within three years. A sufficient fund should be set aside

until the death occurs or the period expires (*Taylor* v. *Poncia*, [1901] W. N. 87).

For the purpose of ascertaining the rate of Estate Duty, all property presumptively passing under the disposition under which the commutation is being made is to be taken into account. Thus, if under a settlement considerable real estate is settled on *A* for life and a part of it is sold or dealt with in such circumstances that it is necessary to commute the Estate Duty presumptively payable on *A's* death, all the property subject to the settlement which will presumptively pass on *A's* death must be aggregated to find the rate of duty on the property dealt with. Subject as above, no other property which may be expected to pass on the life tenant's death, such as his free estate, is ordinarily taken into account for aggregation. As already indicated, however, the Commissioners may refuse to commute except upon their own conditions.

The above statements have no application to Succession Duty. A succession is created as soon as the settlement becomes operative, and "a succession within the Act once established, no manipulation of the parties afterwards can get rid of it." The point is all the more important where the property may escape Estate Duty by means of the intended transaction, because it will then become actually chargeable with Succession Duty in circumstances where the payment of Estate Duty would have conferred exemption. If the Succession Duty is commuted in a case of this kind, and the Estate Duty afterwards becomes leviable (usually by reason of a death within three years), the Succession Duty is allowed against the Estate Duty. Whenever settled property is being dealt with, therefore, the question of commuting Succession Duty should be carefully considered (*see* pp. 469–471, *infra*).

CHAPTER III.

PERSONS ACCOUNTABLE AND INCIDENCE OF THE DUTY.

The present chapter assumes that Estate Duty is leviable, and deals mainly with the questions, (1) who is liable to the Revenue for the duty, and (2) who ultimately bears the burden. Several important provisions are relevant to both questions. For convenience of reference, but at the cost of some repetition, these have been dealt with in each connection.

The whole subject is considered under the following headings:—

A. The Executor—under the Finance Acts.
B. The Executor—under the Property Acts of 1925.
C. Other Persons—under the Finance Acts.
D. Other Persons—under the Property Acts of 1925.
E. Enforcement of Liability.
F. Limitation of Liability.
G. Estate Duty as a Charge.
H. Certificates of Discharge.
I. Protection of Purchasers.
J. Facilities for raising Estate Duty.
K. Incidence of Duty—No Express Direction.
L. Express Directions as to Incidence.
M. Adjustment of Duty Already Paid.

A. The Executor—under the Finance Acts.

The executor of the deceased is required to pay, on delivery of the Inland Revenue Affidavit or Inventory,

the Estate Duty in respect of all personal property, wherever situate, of which the deceased was competent to dispose at his death (F. A. 1894, ss. 6 (2) and 8 (3)).

The Meaning of "Executor."

For the purpose of all *obligations* under the F. A. 1894, the expression "executor" includes not only a duly constituted executor or administrator but also any person who takes possession of or intermeddles or intromits with the personal property of the deceased (ss. 22 (1) (*d*) and 23 (11)). The liability of an executor *de son tort* or *vitious intromitter* is illustrated in *New York Breweries* v. *A. G.*, [1899] A. C. 62, where on the death of a foreign owner of shares in an English company, the company transferred the shares into the names of foreign executors, no British grant of representation having been extracted and no Estate Duty paid. It was held that the company, by administering part of the estate, had made themselves accountable for the duty which should have been paid on obtaining Probate here. A person who takes possession of or in any way administers any part of the personal estate of a deceased person, without obtaining Probate or Letters of Administration within six months from the death, or two months from the termination of any suit respecting the will or grant, is also liable to penalties under the Stamp Act, 1815, s. 37, and the Crown Suits, &c., Act, 1865, s. 57. These provisions are applied to real estate in England by the L. T. A. 1897, s. 2 (which is still in force). A list of special cases, in which a grant is dispensed with, is given on pp. 285–289.

The executor of a sole or last surviving executor, and executors *ad infinitum* in the "chain" of executorship, are within the definitions (*see* A. E. A. 1925, s. 7).

Liability is not restricted in the case of a limited grant. Thus an administrator *pendente lite*, whose grant

extends only to one year's income of the estate, must pay Estate Duty on the whole of the personalty before he can obtain that grant (*re Grimthorpe, Beal* v. *Grimthorpe*, "The Times," 6th June, and 1st and 8th August, 1905). Grants limited to settled land are in practice issued without previous payment of duty on the free personalty, but the special executor seems in strictness to incur all the obligations of a general executor under the F. A. 1894.

The Property to which the Rule Applies.

The subject of competency to dispose has already been discussed in Chapter I (pp. 8–13). In concrete terms, personal property of which the deceased was competent to dispose includes, in addition to the free personal estate in Great Britain:—

(1) Free moveable property situate outside Great Britain—so that the British executor is accountable even if separate executors are appointed for the non-British property (*re Manchester, Duncannon* v. *Manchester*, [1912] 1 Ch. 540; *Lord Advocate* v. *Douglas's Executors* (1912), 1 S. L. T. 216);

(2) A severable share of personal property held jointly—even when in fact it devolves beneficially by survivorship;

(3) Personal property over which the deceased had a general power of appointment—whether he exercised it or not;

(4) Entailed personal property—even if it is not disposed of by the will of the deceased and devolves under the entail; and

(5) Property passing under a nomination by the deceased which is revocable by him, *e.g.*, under the Post Office Savings Bank Regulations.

There are two exceptions to the executor's liability under this head :—

(1) In the case of such works of art, etc., as are exempted from death duties until sold (pp. 264–266), the only person accountable for duty, if and when a sale takes place, is the person who sells the articles or for whose benefit they are sold (F. A. 1930, s. 40 (2), replacing F. A. 1896, s. 20 (2)). Even if the articles form part of the free personal estate of the deceased, the executor, as such, is obliged merely to give particulars in the Inland Revenue Affidavit or Inventory.

(2) Undivided shares in freehold land in England or Wales are personal property, because the land is in all cases subject to a trust for sale. But if that trust is purely statutory the shares are still "real property" for the purposes of the death duties (*see* pp. 5–6), and the executor's liability will rest primarily on the L. P. A. 1925.

The Executor's Obligations.

The Estate Duty payable by the executor is to be collected on an Inland Revenue Affidavit (*i.e.*, the affidavit leading to the grant of Probate or Letters of Administration), which must be in the form prescribed by the Commissioners, and the duty is due on the delivery of the affidavit or on the expiration of six months from the death, whichever first happens (F. A. 1894, ss. 6 (2) and (7), 8 (14) and 22 (1) (*m*), (*n*) and (*o*)). In the application of the Act to Scotland, the expression "Inland Revenue Affidavit" means the inventory of the deceased's personal estate and includes an additional inventory; "on delivering the Inland Revenue Affidavit"

means on exhibiting and recording a duly stamped inventory (F. A. 1894, s. 23 (5) and (6)).

The executor is not liable for any duty in excess of the assets which he has received as executor, or might but for his own neglect or default have received (F. A. 1894, s. 8 (3)—on the question of what property passes to the executor *as such, see* pp. 186–189).

Apart from paying duty, the executor must specify in the Inland Revenue Affidavit or Inventory, to the best of his knowledge and belief, all the property in respect of which Estate Duty is payable on the death (F. A. 1894, s. 8 (3)). He must do this whether he is accountable for duty on such other property or not. Where he does not know the amount or value of any property which has passed, he may state in the affidavit or inventory that such property exists, but that he does not know the amount or value, and that he undertakes, as soon as the amount and value are ascertained, to bring in an account thereof, and to pay both the duty for which he may be liable and also any further duty payable by reason thereof, for which he may be liable, in respect of the property previously specified (F. A. 1894, s. 6 (3)). That is to say, he must undertake to pay the duty on the omitted asset (if it falls in his province) and also any additional duty on the assets already accounted for, in case a higher *rate* becomes applicable. The executor must, however, make full inquiries and swear to the best of his knowledge and belief in the first instance (*re Beech,* "The Times," 9th August, 1904). He must use diligence to ascertain the value of the property, and must ascertain it within a reasonable time (*re Horrex,* "The Times," 9th March, 1910). Duty is accepted on a round sum in very exceptional cases only, as where the executor cannot prosecute his inquiries without the aid of a grant of representation. In such cases application should be

made to the Estate Duty Office, with a full statement of the circumstances and an undertaking, if the request is granted, to render, as soon as possible, a Corrective Affidavit, giving full particulars of the estate, and to pay any additional duty. Even in the exceptional cases duty should be tendered on an estimated, not a *nominal,* amount.

The Commissioners are expressly empowered, from time to time within three years after the grant of Probate or Letters of Administration or recording of inventory, as often as they think necessary, to require the executors to furnish such explanations and to produce such documentary or other evidence respecting the contents of, or particulars verified by, the affidavit or inventory, as the case seems to them to require (Customs and Inland Revenue Act, 1881, s. 37).

Optional Payments.

In two cases the executor is *authorised* to pay Estate Duty for which he is not accountable under the foregoing provisions, viz.: (1) in respect of property which is under his control by virtue of any testamentary disposition by the deceased, and (2) in respect of property not under his control, if the accountable persons request him to make the payment (F. A. 1894, s. 6 (2)). The first category includes freehold property charged with debts or devolving on the executor under the L. T. A. 1897, but in view of the L. P. A. 1925, it is now of little importance in England and Wales. Payments by the executor in these cases do not affect the ultimate incidence of the duty.

B. The Executor—under the Property Acts of 1925.

A personal representative is accountable, where the deceased dies after 1925, for all death duties (*i.e.,*

Succession Duty as well as Estate Duty) in respect of land (including settled land) in England or Wales, which devolves upon him by virtue of any statute or otherwise (L. P. A. 1925, s. 16 (1)). For this purpose the personal representative means the executor, original or by representation, or administrator for the time being, and also, as regards liability for duty, any person who takes possession of or intermeddles with the property of the deceased without the authority of the personal representatives or the Court (*ibid.*, s. 205 (1) (xviii)). One who intermeddles with the personal estate, therefore, renders himself liable for duty on the real estate.

This rule applies to registered as well as non-registered land, but the former is also the subject of concurrent provisions to the same effect in the L. R. A. 1925 (ss. 3 (xvii) and 73 (3)).

The scope of the rule is determined by the A. E. A. 1925, s. 1, which provides that real estate in England and Wales, to which a person dying after 1925 was entitled for an interest not ceasing on his death, shall, notwithstanding any testamentary disposition thereof, devolve on his death on his personal representative as chattels real did before 1926. This includes not only the free real estate, but also settled land, real estate over which the deceased exercised a general power of appointment, and entailed property disposed of by his will, but not property passing under an entail or by survivorship in a joint tenancy (A. E. A. 1925, s. 3). Undivided shares in freehold land, in cases where they fall to be treated as real property (*see* pp. 5–6), must also be regarded, presumably, as "land" devolving on the personal representative within the meaning of s. 16 (1) of the L. P. A. 1925.

Special provision is made by the A. E. A. 1925, ss. 22–24, for the vesting of settled land in a personal

representative. A grant of representation may be either a general one covering settled land, or a grant save and except settled land, or a grant limited to settled land alone. The representative in whom settled land is vested holds it on trust to convey it to the new tenant for life or statutory owner, subject *inter alia* to being satisfied that provision has been or will be made for the payment of any unpaid death duties in respect of the land or any interest therein for which he is accountable, and any interest or costs in respect of such duties, or that he is otherwise effectually indemnified against such duties, interest and costs (S. L. A. 1925, ss. 7 (1) and 8 (3)). If the conveyance is made by principal vesting deed (and not by vesting assent) it may contain a reservation of a term of years absolute in the land upon trusts to indemnify the person conveying against unpaid death duties in respect of the land or any interest therein, with the relative interest and costs (*ibid.*, s. 8 (6)). The S. L. A. (*see* s. 119 (3)) applies to registered land, subject to the provisions of the L. R. A. 1925. For the present purpose the only relevant part of the latter Act is s. 87, which provides that the personal representative shall hold any settled registered land (whether settled by the will of the deceased or by an instrument taking effect before his death), subject to payment or making provision for payment of death duties and other liabilities affecting it, on trust to transfer the same by assent to the tenant for life or statutory owner. Both classes of land are, therefore, on the same footing, except that in the case of registered land there is no machinery for reserving a term of years.

The last paragraph applies only where the land remains settled land after the death. Where the settlement comes to an end on the death and the beneficiary is entitled absolutely, the land is not settled land for the purpose of representation, but devolves on the

ordinary personal representative (*re Bridgett and Hayes' Contract*, [1928] 1 Ch. 163). Apparently it makes no difference whether his grant does or does not expressly exclude settled land.

As an example, suppose *A* is full owner of Blackacre, tenant for life of Whiteacre, with remainder to *B* absolutely, and tenant for life of Greenacre, with remainder to *C* for life and remainder over. On *A's* death a grant of Probate, save and except settled land, is made to *X*, and a settled land grant (in respect of Greenacre) to *Y*. *X* is accountable for the duties on Blackacre and Whiteacre only, *Y* for those on Greenacre only (the respective beneficiaries being liable in addition). The point worthy of note is the liability of *X* with regard to Whiteacre—the *Bridgett and Hayes Case*.

A personal representative may, as a condition of giving an assent or making a conveyance, require security for the discharge of any duties to which the property, whether settled or not, is subject, but is not entitled to postpone the giving of an assent merely because the duties are outstanding, if reasonable arrangements are made for discharging them. He has only to be satisfied that the duties will be paid (A. E. A. 1925, s. 36 (10); S. L. A. 1925, 1st Schedule, Note at end of Form No. 5).

A personal representative is not liable under the Acts of 1925 for payment of duty in excess of the assets, including real property, vested in him or in the trustees of the settlement, which may be for the time being available in his or their hands for the payment of the duty, or which would have been so available but for his or their own neglect or default (L. P. A. 1925, s. 16 (6); L. R. A. 1925, s. 73 (14)). The "time being" is presumably any time between the death and the discharge of the duty. "Available" is thought to mean "available as between the interested parties"; if so, property

passing under one disposition to *A* cannot be resorted to for duty on property passing under another disposition to *B*.

C. Other Persons—under the Finance Acts.

General Rules.

In all cases where the executor of the deceased is not accountable for Estate Duty under the F. A. 1894, every person to whom any property passes on the death for any beneficial interest in possession, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee or other person in whom any interest in the property, or the management thereof, is at any time vested, and every person in whom the same is vested by alienation or other derivative title, is accountable for the duty on such property, and must deliver and verify an account thereof to the best of his knowledge and belief (F. A. 1894, s. 8 (4)). The expression "trustee" includes in Scotland tutors, curators and judicial factors (s. 23 (13)). The account must be delivered within six months from the death or such further time as the Commissioners may allow (s. 6 (4)).

The remarkable feature of this provision is that it does not apply to any property in regard to which the executor is accountable under the Act, *i.e.*, to personal property of which the deceased was competent to dispose. Neither an ordinary legatee, nor the trustees or beneficiaries in any of cases (1) to (5) on p. 166, *supra*, is personally liable to the Revenue for Estate Duty. This is perhaps natural in the legatee's case, but it is worthy of note that the Revenue cannot recover the duty directly from a surviving joint tenant of pure personalty or from a trustee of pure personalty over which the deceased

had (even if he did not exercise) a general power of appointment. Freedom from personal liability, however, is a matter of form rather than substance where the duty is a charge on the property, as it is in the cases of the joint tenancy and the power of appointment. If the executor pays the duty he can recover it either by personal action or by recourse to the property: if he fails to do so the interested parties must settle with the Revenue in order to redeem the charge. The fact that the executor may be accountable under the Acts of 1925 does not diminish the liability of any other person, unless he is a purchaser (L. P. A. 1925, s. 16 (5): L. R. A. 1925, s. 73 (11)). As will appear in the next part of this chapter, there are certain cases (*e.g.*, a joint tenancy of leaseholds) where persons, not personally accountable under the F. A. 1894, are liable as estate owners or registered proprietors.

Where a number of persons are accountable concurrently, the Revenue can proceed against any or all of them. The liability of the trustees is no defence in proceedings against a beneficiary, or *vice versa*.

Beneficiaries.

A beneficiary may be accountable although he is not the owner of the property. It is sufficient that he has any beneficial interest therein, provided that the interest is in possession. And, however limited his interest may be, he is liable for the whole Estate Duty on the property affected, not merely for so much as is attributable to the value of his interest. Thus, if property was settled on *A* for life, with remainder to *B* for life, and remainder to *C* absolutely, *B* is accountable for duty on the principal value in connection with the death of *A*. *C*, not being in possession, is under no immediate liability. But if *B* dies before that duty is paid, *C* will become responsible for the duties on both deaths. As regards

the duty on *A's* death, *B's* personal representatives will be liable also, *B* having been a Crown debtor.

Among the persons accountable under this head is a pecuniary legatee whose legacy becomes payable on the death of a life tenant or annuitant. The legacy is property which passes to him for a beneficial interest in possession, and it is property for which the executor of the deceased (*i.e.*, the life tenant or annuitant) is not responsible (*Berry* v. *Gaukroger*, [1903] 2 Ch. 116). A legatee taking an *immediate* legacy appears to be in the same position, if and so far as his legacy is payable out of property other than the testator's free personal estate (see, *e.g.*, *re Spencer Cooper*, *Poë* v. *Spencer Cooper*, [1908] 1 Ch. 130).

If a beneficiary makes a gift or settlement of property chargeable with Estate Duty, the substituted beneficiary is liable for the unpaid duty as an alienee. A purchaser is in no better position unless he comes within one of the express provisions mentioned in Part I of this chapter. So also a person who takes the property under the beneficiary's will or intestacy (*i.e.*, a "derivative title") is responsible for the old duty, if still unpaid.

Where a fund is divisible into shares, a beneficiary is held liable only in respect of his own share.

The foregoing statements deal only with liability to the Revenue and do not necessarily apply to the ultimate incidence of the duty.

Trustees.

Where the taxable property is vested in trustees, it is usually and properly accounted for by them (*cf. re Orford*, *Cartwright* v. *Del Balzo*, [1896] 1 Ch. 257). It seems, however, as between trustee and beneficiary, that the latter has the right to render the accounts himself if he wishes, at any rate where he becomes

absolutely entitled to the property as a whole (*re Dodd, Dodd* v. *Dodd,* [1918] W. N. 100).

Although a trustee is liable only to the extent of the property which he has actually received or disposed, he must be taken to have "received" any property which has vested in him, although a beneficiary may have the physical possession. And to the same limited extent, a trustee, guardian, etc., is liable even where the property is not vested in him, if he has powers of management.

The trustee is accountable if the property or management is *at any time* vested in him. Where, therefore, a life tenant releases his interest for the benefit of the remainderman, and the property is taken out of settlement, the trustees should make provision for the Estate Duty contingently payable on the life tenant's death within three years (*Taylor* v. *Poncia,* [1901] W. N. 87). But a trustee who retires, leaving the property in the hands of continuing or new trustees, is not answerable for duties in connection with a subsequent death, notwithstanding that the liability could be foreseen (*cf. re Hall-Dare, Le Marchant* v. *Lee Warner,* [1916] 1 Ch. 272). A trustee who retires after the death which attracts the duty will still be liable after his retirement. If the property is lost or destroyed after the death the trustees can apparently be required to pay the duty out of their own pockets. So also they must pay the duty in respect of property lost before the death through their breaches of trust, on the ground that their liability to make good the loss was an asset passing on the death.

Solicitors and Agents.

It is provided by the F. A. 1894, s. 8 (4), that nothing in the section is to render a person accountable for duty who acts merely as agent or bailiff for another person in the management of property. This may be taken

to protect solicitors, bankers, auctioneers, brokers, etc., acting as such. But any person who, having received any sum of money as and for any duty, does not duly apply the money in payment of the duty, and improperly withholds or detains the same, is himself accountable for the amount of the duty, and proceedings may be taken against him in the High Court or Court of Session for an account and payment of the money, with the costs of the proceedings (Stamp Duties Management Act, 1891, s. 2, incorporated by F. A. 1894, s. 8 (1)).

Special Classes of Property.

Where works of art and other chattels are exempted from duty until sold (pp. 264–266), the only person liable for duty, if and when a sale takes place, is the person selling the articles or for whose benefit they are sold (F. A. 1930, s. 40 (2), replacing F. A. 1896, s. 20 (2)).

Similarly, in the case of timber, which is not itself taxable, the Estate Duty on the proceeds of any sale is payable by the person in whom the land is vested at the time, whether as owner or trustee (F. A. 1912, s. 9).

Where Estate Duty is payable under the F. A. 1930, in consequence of a transfer to a company, the company is accountable (s. 36; pp. 76–77, *supra*).

Where capital sums or annuities become chargeable at the death on property which then passes, the person accountable in respect of the property must pay the full duty, without deduction for the charges. If the property itself does not pass on the death, but is charged with an annuity ceasing or arising on that event, or with a capital sum which then becomes payable, the trustee or owner is similarly liable (*Inland Revenue* v. *Maclachlan* (1899), 1 Fra. 917).

In an exceptional case, where bonds were granted in the deceased's lifetime (not by the deceased, but by

trustees under a special power), securing an annuity and capital sums payable after the death, it was held that the bonds were incumbrances within the meaning of the F. A. 1894, s. 7 (1), and that the person succeeding to the estates was entitled to an allowance—the other beneficiaries being left to account separately for the Estate Duty attributable to their interests *Colquhoun's Trustees* v. *Colquhoun's Trustee*, [1913] S. C. 874). The decision is in some respects in conflict with that of the House of Lords in *Cowley* v. *Inland Revenue Commissioners*, [1899] A. C. 198, and is in any event of limited application.

In the special case where one continuing annuity is treated as *passing* from one annuitant to another, the duty is claimed from the surviving annuitant.

D. Other Persons—under the Property Acts of 1925.

In every case where land in England and Wales devolves, on a death after 1925, otherwise than upon the personal representative of the deceased, the estate owner is accountable (unless he is a purchaser who acquired the legal estate after the charge for death duties has attached and free from such charge) for all the duties, *i.e.*, Succession Duty as well as Estate Duty, which become payable in respect of his estate in the land or any interest therein capable of being over-reached by his conveyance, being a conveyance to a purchaser made under the S. L. A. 1925 or pursuant to a trust for sale (L. P. A. 1925, s. 16 (2)). The estate owner is defined as "the owner of a legal estate" (*ibid.*, s. 205 (1) (v)). This applies to registered as well as non-registered land, but a registered proprietor is liable concurrently to the same extent under the L. R. A. 1925, s. 73 (4).

These provisions involved no important change in the law. They do not affect the ordinary devisee or the ordinary successor to settled land, who becomes an estate owner or registered proprietor after the death, for he can become such an owner or proprietor only by virtue of an assent or other act by a personal representative, upon whom the land would first devolve, and an estate owner or registered proprietor, as such, is accountable only where the land does *not* devolve upon the personal representative. Liability under this head is therefore confined to cases where the estate owner or registered proprietor (1) occupied that position when the death occurred (*e.g.*, a trustee, donee or surviving joint tenant), or (2) acquired the property, which had not first devolved on the personal representative, after the death and subject to the charge for duty. But in practically all these cases the same person would have been liable, as trustee, beneficiary, alienee or otherwise, under the F. A. 1894. The only instances in which persons, not accountable under that Act, are accountable under the present law, seem to occur where the property taxable is free personal estate in Great Britain of which the deceased was competent to dispose, *e.g.*, money to arise under an express trust for sale of land, over which the deceased had a general power of appointment, or leasehold property of which he was a joint tenant. As the *land* in such cases devolves otherwise than upon the personal representative, the trustees or surviving joint tenants are liable as estate owners or registered proprietors for the death duties in respect of the deceased's interest, but the personal representative, who would alone have been accountable personally under the F. A. 1894, remains liable concurrently with the other parties.

Nothing in the sections under discussion affects the remedies of the Commissioners against any person other

than a purchaser (L. P. A. 1925, s. 16 (4) and (5); L. R. A. 1925, s. 73 (11)). A conveyance or transfer to any other person takes effect subject to any charge for duty, whether the charge is registered or not (L. P. A. 1925, s. 17 (4); L. R. A. 1925, s. 73 (2)). The position of purchasers is discussed separately (pp. 196–200).

Nothing in the relevant part of the L. P. A. 1925 is to render a mortgagee liable in respect of any charge for duties which is not paramount to his mortgage (s. 16 (6)).

A "tenant for life, statutory owner, trustee for sale, or other person in a fiduciary position as such" (where the land is not registered) and "a trustee or other person in a fiduciary position, as such" (in the case of registered land) is not liable under these Acts for payment of duty in excess of the assets, including real property, vested in him or in the trustees of the settlement, which may be for the time being available in his or their hands for the payment of the duty or would have been so available but for his or their own neglect or default (L. P. A. 1925, s. 16 (6); L. R. A. 1925, s. 73 (14); p. 172, *supra*). Even a person in a fiduciary position may thus be liable to pay duty in excess of the assets under his own control, but difficulty can hardly arise except in the event of funds being lost or misappropriated by S. L. A. trustees.

E. Enforcement of Liability.

Personal Liability.

Every person who is made accountable for Estate Duty becomes a Crown debtor, and his goods and estate are accordingly liable to satisfy the debt (F. A. 1894, s. 8 (1), incorporating S. D. A. 1853, s. 44; *Berry* v. *Gaukroger*, [1903] 2 Ch. 116). Thus if an administrator dies

intestate while duty payable by him is outstanding, *his* administrator, although not in the chain of representation to the first intestate, is liable for the unpaid duty. So also is the executor or administrator of one of several trustees, notwithstanding that other trustees survive.

Accountable persons do not escape liability by disposing of the taxable property, which, indeed, may never be vested in them. The alienee, unless he is a protected purchaser, will be liable in addition to, not instead of, the persons already responsible. Where a purchaser is specially protected by the Property Acts of 1925, the continuing liability of the vendor is provided for expressly. In the case of non-registered land, if the charge for duty is not registered as a Land Charge, so that a purchaser takes free therefrom, a person conveying a legal estate to a purchaser remains personally accountable, and the charge for duty attaches to the proceeds of sale (L. P. A. 1925, s. 17 (2)). The conveying party is not absolved, however, even if the charge *is* registered, so that the purchaser takes subject to it, for nothing in the Act affects the remedies of the Commissioners against any person other than a purchaser or a person deriving title under him (s. 16 (4)). A person disposing of registered land, by a disposition which is registered or protected on the register, remains liable in the same way, and the duty is again a charge on the proceeds of sale (L. R. A. 1925, s. 73 (5) and (11)).

No proceedings for the recovery of Estate Duty may be taken by the Commissioners in a British Possession (F. A. 1894, s. 20 (2)).

Information and Accounts under Penalty.

Every person accountable for Estate Duty, and every person whom the Commissioners believe to have taken possession of or administered any part of the estate in respect of which duty is leviable on a death, or of the

income of any part of such estate, must, to the best of his knowledge and belief, if required by the Commissioners, deliver to them and verify a statement of such particulars together with such evidence as they require relating to any property which they have reason to believe to form part of an estate in respect of which Estate Duty is leviable (F. A. 1894, s. 8 (5)).

This provision applies not only to the ordinary accountable parties—executors, executors *de son tort*, trustees, beneficiaries, alienees, etc.—but also to persons who may not be accountable for the duty. It applies, for example, to a mortgagee in possession of the deceased's land, to a person who has obtained control of the deceased's moveable property abroad, and to a surviving joint tenant of personalty. A legatee who has received a specific legacy may be called upon to furnish information bearing on its value, or a supposed donee to supply particulars of any gifts which he has received. The clause secures also that a person accounting for part of the property passing on a death shall disclose, as far as he can, the other property liable to aggregation, thus enabling the rate of duty to be determined. Where a statement of facts is required to be verified and is not embodied in an affidavit or sworn account, a statutory declaration is used. It is not thought that a person who has acted merely as an agent in the ordinary course of his business (*e.g.*, as a solicitor or banker) is compellable to furnish information under this rule. But where the duties of such a person go beyond the ordinary routine, as, for example, where securities are placed in the name of a banker as nominee, he may be called upon for information.

A person who wilfully fails to comply with the provisions of s. 8 of the F. A. 1894, as regards accountability and giving information, is liable under sub-s. (6) to a penalty of £100 or (at the Commissioners' option) a sum

equal to double the unpaid Estate Duty, if any, for which he is accountable, but the Commissioners have power to reduce the penalty. The penalties apply to executors, who are accountable under s. 8 as well as under s. 6 (2) of the Act.

It is also provided under the same penalty that all affidavits, accounts and statements shall be in such form as may be prescribed by the Commissioners, and, if so required, in duplicate; and that accounts and statements shall be delivered and verified on oath and by the production of books and documents (F. A. 1894, ss. 8 (14) and 22 (1) (*o*)). But the Commissioners may, if they think fit, accept a statement as a *correction* of an affidavit or account without requiring an oath (F. A. 1900, s. 13 (2)).

Special provisions as to furnishing information and special penalties, in the case of companies to which the Act applies, are contained in the F. A. 1930, s. 36 (pp. 76–77).

Legal Proceedings.

Revenue process for the recovery of Estate Duty in England, if the validity of the claim is in dispute, usually takes the form of an English Information under Part II of the Crown Suits, &c., Act, 1865 (incorporated by the F. A. 1894, s. 8 (1)). In cases of mere default in payment, where the validity of the claim is not disputed, the procedure is by Writ of Summons under Part V of the Crown Suits, &c., Act, 1865. In the event of non-compliance the accountable party is attached. Process by Writ of Extent is also available, though now seldom or never used. This leads to the seizure of property and the ultimate sale thereof. The recovery of penalties is governed by the Inland Revenue Regulation Act, 1890, s. 21. The parties in any pending Revenue matter may concur in stating any question of law arising therein as a "special case" for hearing by the Revenue Judge.

Proceedings in Scotland are taken under the Exchequer Court (Scotland) Act, 1856, and Crown Suits (Scotland) Act, 1857.

Where proceedings are instituted for the recovery of Estate Duty in respect of any property, the High Court has jurisdiction to appoint a receiver of such property and the rents and profits thereof, and to order a sale (F. A. 1894, s. 8 (13)). This applies whether the duty is a charge on the property or not. The Court of Session may similarly appoint a judicial factor upon the property, and may order a sale (F. A. 1894, s. 23 (1) and (4)).

Any person aggrieved by the decision of the Commissioners as to repayment of overpaid duty, or by the amount of duty claimed, may on payment of the duty or giving security as directed by the Court, appeal to the High Court, or to the County Court where the value of the property does not exceed £10,000 (F. A. 1894, s. 10). Procedure is regulated by the Rules of the Supreme Court (Finance) Act, 1895, and the County Court Rules, 1903, Order XLII. In Scotland the appeals lie to the Court of Session and Sheriff Court respectively. Procedure is regulated by C. A. S., C. viii. This provision does not apply where the question in dispute is the value of any real or leasehold property (F. A. 1910, s. 60 (3)). In such cases the appeal is made under the provisions of the F. A. 1910.

Aggrieved parties can also proceed in England by Petition of Right.

F. Limitation of Liability.

No person is liable for Estate Duty under a will or Letters of Administration after six years from the date of settlement of the account in respect of which duty is payable, provided such account was a full and true one and contained all material information, but an account

is not deemed settled for this purpose until the time for payment of the duty thereon has arrived (F. A. 1894, s. 8 (2), incorporating ss. 12 to 14 of the Customs and Inland Revenue Act, 1889). The Inland Revenue Affidavit or Inventory is an account for this purpose. No trustee, executor or administrator is, after the expiration of such six years, to be liable for any such duty, provided it can be shown that the account rendered was correct to the best of his knowledge. The above provisions do not apply unless an account has been delivered (*A.-G.* v. *Montefiore*, 52nd Inland Revenue Report, page 85), and if there has been no delivery before all the duty has become payable there will be no relief from liability until an account has been delivered and six years have elapsed since the assessment of duty.

The expression "settlement of the account" does not involve the actual payment of the duty and where the duty is payable by instalments protection is afforded at the expiration of six years from the date when the last instalment fell due.

As regards liability under any document (other than a testamentary document admitted to Probate), if an attested copy has been deposited with the Commissioners in accordance with the provisions of s. 13 of the Customs and Inland Revenue Act, 1889, no person is to be liable for Estate Duty thereunder after six years from the date of notice to the Commissioners of the fact which gives rise to the immediate claim for duty (s. 8 (2) of the F. A. 1894, incorporating ss. 12 to 14 of the above Act). The six years commence to run, not, of course, from the date when the copy is deposited, but from the date when notice is given in proper form of the fact which gives rise to an immediate claim for duty under the document. Notices are required to be given in the prescribed forms (F. A. 1894, s. 8 (14)). The English form is "Entg. No. 21," and the Scottish

form is "S." The notice should be delivered in duplicate, one copy being receipted and returned.

If after the expiration of twenty years from a death upon which Estate Duty became leviable any such duty remains unpaid, the Commissioners may remit it and any interest thereon on application by the accountable parties (F. A. 1894, s. 8 (11), extended by F. A. 1907, s. 13). This provision, of course, applies whether an account has been rendered or not, and it is not compulsory upon the Commissioners. It applies to all death duties.

The Commissioners are also empowered to remit interest on duty at any time where the amount is so small as not to repay the expense and trouble of calculation and account (F. A. 1896, s. 18 (1)).

The limitation of liability after six years referred to above applies to beneficiaries and persons in a fiduciary position such as executors, trustees, etc.: additional provisions for the *protection of purchasers* are discussed under that head (pp. 197–198, *infra*).

Apart from these provisions there is no limit of time to the liability for Estate Duty. It is a Crown debt, and time does not run against the Crown.

G. Estate Duty as a Charge.

In the case of any property which does not pass to the executor of the deceased *as such*, the Estate Duty rateably attributable thereto is a first charge thereon, except as against a *bonâ fide* purchaser for value without notice (F. A. 1894, s. 9 (1)).

Property passing to the executor *as such* comprises only the free personal estate in Great Britain (whether in possession or in reversion) which devolves under the will or intestacy of the deceased. It includes leasehold property so devolving (*re Culverhouse, Cook* v. *Culverhouse*, [1896] 2 Ch. 251), and the L. P. A. 1925, s. 16 (6) provides that nothing in the relevant part of that Act

shall impose a charge on leasehold land. The free estate does not, of course, include settled leaseholds, even where they devolve on the personal representative.

Some complication arises in the case of a grant "save and except" certain property in the jurisdiction. In *re Scull, Scott* v. *Morris* (1917), 87 L. J. Ch. 59, it was held that the excepted property did not pass to the executor as such, but apparently no grant of representation had yet been extracted in respect of the excepted property. Two or more grants would ultimately be required, and presumably the property covered by each grant would pass to its respective executor *as such*.

The following do not pass to the executor *as such*:—

(1) Free real estate—

"The language of s. 9 (1) of the F. A. 1894 must be construed with reference to the law as it stood at that time, and not in accordance with the provisions of the L. T. A. 1897" (*re Palmer, Palmer* v. *Rose-Innes,* [1900] W. N. 9). The Acts of 1925 have not altered this rule (L. P. A. 1925, s. 16 (4) and (5); L. R. A. 1925, s. 73 (11); A. E. A. 1925, s. 53 (3) and First Schedule, Part II, para. 8 (*b*); *re Morris,* [1927] W. N. 146). Certain undivided shares in freehold land are included in this category (*see* pp. 5–6).

(2) Moveable property outside Great Britain—

This passes to the British executor, if at all, otherwise than by virtue of his British grant of representation (*re Scull, supra*). The principle applies as well to property in Ireland or a Colony as to foreign property—even where the British grant can be re-sealed. An English grant re-sealed in, say, Northern Ireland, is, in relation to the property there, a Northern Irish grant. But there is no

distinction for this purpose between England and Scotland, notwithstanding the need for re-sealing, for s. 9 (1) applies to an English or Scottish executor indifferently.

(3) Joint property devolving by survivorship.

(4) Property over which the deceased exercised a general power of appointment—

After a number of conflicting decisions in lower Courts, it was held by the House of Lords that even where the deceased has exercised such a power by his will over personal property, the appointed property does not pass to the executor *as such* (*O'Grady* v. *Wilmot*, [1916] 2 A. C. 231).

(5) Entailed property—

On the principles laid down in *re Palmer* and *re O'Grady, supra*, even entailed personalty which the deceased disposes of by his will under the L. P. A. 1925, s. 176, will not pass to his executor *as such*.

(6) Property passing under a nomination by the deceased (*e.g.*, under the Post Office Savings Bank Regulations).

(7) Donations *mortis causa*—

(*re Hudson, Spencer* v. *Turner*, [1911] 1 Ch. 206.)

(8) Gifts *inter vivos*—

(*re Crocker, Crocker* v. *Crocker*, [1916] 1 Ch. 25.)

(9) Policies and interests kept up or provided by the deceased for a nominee or assignee.

(10) Property passing under settlements or dispositions created otherwise than by the will or intestacy of the deceased, including property settled by the wills of other persons—

Thus property which passed on the death of *A* to his executor *as such*, and was settled by his will on *B* for life with remainder to *C*, will

not pass to the executor *as such* on the death of *B*, for *B* is then the deceased whose executor is in question.

An exception to the charge is created by the F. A. 1894, s. 20 (2), which provides that nothing in the Act shall create a charge on any property situate in a British possession while so situate. No proceedings may be taken by the Commissioners in such a possession for the recovery of Estate Duty.

There are two distinct aspects of the charge: first, it secures the payment of the duty to the Revenue, and secondly, it requires that the particular property shall bear its own burden of duty. The latter aspect is dealt with separately in connection with the incidence of Estate Duty (p. 207). The charge in favour of the Revenue may be regarded as a statutory mortgage imposed on the property: the owner may dispose of the property or it may devolve again on another death, but (except in favour of a purchaser in the cases mentioned in Part I of the present chapter) any disposition or further devolution will take effect subject to the charge. This is confirmed, as regards dispositions of land to which the Acts relate, by the L. P. A. 1925, s. 17 (4), and L. R. A. 1925, s. 73 (2). Moreover, a charge may spring up after the change of ownership. Thus if *A* makes a gift of property to *B*, and *B* a year later transfers it, or dies and bequeaths it, to *C*, and *A* dies in the second or third year, a charge for Estate Duty in connection with the death of *A* will attach to the property in the hands of *C*. But the charge attaches only to what actually passes or is deemed to pass on the death. If settled realty has been sold under a trust for sale or power of sale or under any of the Settled Land Acts, the charge arising on the *subsequent* death of a life tenant attaches to the proceeds, and does not affect the land so sold.

Although the Estate Duty is made a *first* charge on the taxable property, it ranks after any debts or incumbrances allowed in the assessment (F. A. 1894, s. 9 (3)).

The interest on Estate Duty, as well as the duty itself, is comprised in the charge, for such interest is "recoverable in the same manner as if it were part of the duty" (F. A. 1896, s. 18 (1)). The distinction between duty and interest, drawn in *re Howe, Howe* v. *Kingscote,* [1903] 2 Ch. 69, relates only to the incidence of the burden as between the successive beneficiaries.

The charge extends to the proceeds of sale of any property which has become subject thereto and to the investments for the time being representing such proceeds (F. A. 1894, s. 22 (1) (*f*)), but not in exoneration of the property sold unless the case falls within one of the express provisions for the protection of purchasers. Other Acts have partially covered the same ground. Where the charge for duty is not registered as a Land Charge, and a legal estate is conveyed to a purchaser who takes free from the charge, the charge attaches to the proceeds of sale, funds and other property (if any) derived from the conveyance and to the income thereof (L. P. A. 1925, s. 17 (2)). And a similar charge attaches to the proceeds of sale of registered land to a protected purchaser (L. T. A. 1897, s. 13 (3); L. R. A. 1925, s. 73 (5)). It may be mentioned that, where the duty in such cases is payable by instalments the unpaid duty, with interest at 4 per cent. from the date of the conveyance, etc., becomes immediately payable on the occasion of any sale, exchange, mortgage or registered charge which overrides the charge for duty (L. P. A. 1925, s. 17 (3); L. R. A. 1925, s. 73 (6)). In the case of a *sale* unpaid instalments become immediately payable whether the charge is over-ridden or not (F. A. 1894, s. 6 (8)). The

provisions next following in the Acts of 1925, as to the repayment of any excess of duty, are applicable to Succession Duty only.

The registration of a Land Charge, mentioned above, falls under the L. C. A. 1925, s. 10 (1), Class D (i), which comprises "any charge acquired by the Commissioners of Inland Revenue under any statute passed or hereafter to be passed for death duties leviable or payable on any death which occurs after the commencement of this Act," *i.e.*, after 1925. Such a charge is to be registered in the name of the estate owner. If the deceased was the estate owner the charge is in practice registered (if at all) in his name and not in that of his personal representative.

The Commissioners have none of the ordinary powers of a mortgagee in connection with the charge. Where, however, any proceeding for the recovery of Estate Duty has been instituted, the Court can appoint a receiver of the rents and profits of the property or a judicial factor, and can order a sale (F. A. 1894, ss. 8 (13) and 23 (4)). In appropriate circumstances an injunction may be granted to restrain dealings with the property (*A.-G.* v. *Wack* (1899), not reported).

Where the charge affects stocks or shares, it may be protected by a *distringas* notice, and in the case of funds in Court, by an "Inland Revenue Stop."

H. Certificates of Discharge.

The Commissioners are empowered or required to issue certificates of discharge from Estate Duty in the following cases:—

1. Under the F. A. 1894, s. 11 (1).—The certificate is applicable only to property on which the duty is a charge. It is not required or given, therefore, in respect of leaseholds passing under the will or intestacy of the deceased. It is to be

given on the application of the person accounting for the Estate Duty, when the Commissioners are satisfied that the full duty on the property in question has been *or will be* paid. Where the duty has not been fully paid, a certificate is issued in practice only if the property is being sold and the circumstances justify the non-payment: for instance, where the value of the property in question, or of other property aggregable therewith, has not been finally settled, and the accountable parties give an undertaking or security for the payment of the duty, or for the adjustment of the duty provisionally paid, in case the value or rate should require correction. The certificate discharges only the property to which it relates, and not the person paying the duty, so that if it afterwards appears that further duty should have been paid, the accountable party is still liable, although the additional duty is not a charge on the property.

2. Under the F. A. 1894, s. 11 (2).—Where a person is accountable for the Estate Duty in respect of any property passing, he may, after two years from the death of the deceased, apply to the Commissioners, at the same time delivering to them and verifying a full statement to the best of his knowledge of all property passing and the several persons entitled thereto. The Commissioners may then determine the rate of Estate Duty in respect of the property for which the applicant is accountable, and on payment of the duty at that rate the property and also the applicant, so far as regards that property, are to be discharged from any further claim for duty, and the Commissioners are

required to give a certificate of such discharge. The Commissioners are empowered by the F. A. 1907, s. 14, to entertain such an application before the lapse of two years from the death, and as respects any application so entertained, the original provisions (other than the two-year limit) will have effect. The certificate is given only where there is no reason to believe that any circumstances may come to light which would alter the rate and the amount of duty. This certificate is not limited to property on which the Estate Duty is a charge, and, unlike the other statutory certificates, it operates as a personal release as well as a discharge of the property. As an example, suppose the property passing on a death consists of the deceased's free estate and a settled fund, and the executors neglect to prove the will or are engaged in a long dispute as to the ownership of some asset. But for this special provision, the trustees of the fund could not dispose of their liability until the value of the free estate was finally settled. Under this provision they can apply to the Commissioners, giving all available particulars of the free estate and of their own fund. In appropriate circumstances the Commissioners will fix once for all a rate of duty for the fund, and upon payment will give a certificate releasing both the trustees and the fund from any further liability.

3. Under the F. A. 1894, s. 12.—The Commissioners are empowered, upon the application of a person entitled to an interest in expectancy, to commute the Estate Duty which would become payable in respect of such interest, and accept a certain sum of money down (*see* pp. 141–142

and 161–163). On the receipt of this sum the Commissioners are to give a certificate of discharge, which is written upon the back of the receipted account.

4. Under the F. A. 1894, s. 13 (1).—In certain circumstances, the Commissioners are empowered to compound the death duties by a single payment where, owing to the number of deaths or the complicated nature of the interests of different persons, it is difficult or unduly costly to ascertain the exact amount of the duties payable. In such cases also, they are bound to give a certificate of discharge. This provision applies to Legacy Duty and Succession Duty as well as to Estate Duty.
5. Under the L. P. A. 1925, s. 16 (7).—This certificate relates only to land in England or Wales and to cases of death after 1925. As in Case 1 above, it is not applicable to leaseholds which form part of the deceased free estate. It is to be given on the application of the accountable party when the Commissioners are satisfied that the personal representative or other accountable person has paid or commuted, or will pay or commute, the death *duties* on the property in question. Where Succession Duty is a charge, therefore, the certificate cannot be given until that duty as well as the Estate Duty has been paid or provided for. The certificate discharges only the land to which it extends, not the accountable party. The production of the certificate is a sufficient authority to the Land Registrar or other proper officer to enable him to cancel any Land Charge registered in respect of the duties, so far as it affects the land comprised in the certificate.

6. Under the L. R. A. 1925, s. 73 (9).—When all claims for duties in respect of registered land have been satisfied, or no such claims arise, or the Commissioners are satisfied that the duties will be paid or commuted, they are required to notify the fact to the Registrar, who is thereupon to cancel any notice of the claim. In the absence of this notification, the Registrar cancels any such notice before registering, or entering notice of, any disposition which would over-ride the charge for duties, and at the same time informs the Commissioners (L. R. A. 1925, s. 73 (8)). The matter is also dealt with in Rules 191–193 under the Act. Somewhat similar provisions were in force under the L. T. A. 1897, s. 13, and the relative Rules 208–211.

A certificate obtained by fraud or non-disclosure of material facts will not discharge any person or property (except a *bonâ fide* purchaser for value without notice and the property purchased by him), nor will it affect the rate of duty on any other property afterwards shown to have passed on the death (F. A. 1894, s. 11 (3) and (4), and s. 13 (2)). This statement requires qualification in particular cases: it seems that the property is effectually discharged, in spite of fraud, etc., in favour of any innocent party where the certificate is given after a commutation (Case 3), and perhaps where it is given under the L. P. A. 1925 (Case 5). It seems also that there is no discharge in the case of fraud, etc., even in favour of a purchaser, where the certificate follows a composition (Case 4). The express provision, that the rate of duty on other property shall not be affected, relates only to certificates given under s. 11 of the F. A. 1894, but one of these (Case 2) is the only certificate which could possibly be supposed to operate in that manner.

No fee is payable for a certificate under the F. A. 1894 (s. 8 (15))—or in practice for any other statutory certificate.

The procedure on applying for certificates and the subject of informal assurances are dealt with at pp. 310–316, *infra*.

I. Protection of Purchasers.

Provision is made for the protection of purchasers, mortgagees, etc., from a subsisting charge for duty, in the following cases where other alienees would take subject to the charge:—

(1) Purchaser without notice.
(2) Lapse of six or twelve years.
(3) Certificate obtained by fraud, etc.
(4) Property on trust for sale at the time of the death.
(5) Registered land—death before 1926—liability not noted on the register.
(6) Registered land—death after 1925.
(7) Non-registered land in England or Wales—death after 1925—charge not registered.
(8) Assent by a personal representative under the A. E. A. 1925.

Exemptions from duty by reason of a purchase and reduced rates in favour of purchasers of reversions are dealt with in Chapter IV (Nos. 8 and 9).

1. A *bonâ fide* purchaser for valuable consideration, without notice of the liability, is not accountable for the Estate Duty on property purchased by him (F. A. 1894, s. 8 (18)). Nor is the duty a charge on the property as against such a purchaser (*ibid.*, s. 9 (1)). "Purchaser" includes a lessee, mortgagee, etc. The consideration need not be in money or money's worth; marriage is sufficient, so that the trustees of a marriage settlement may be purchasers for this purpose (*Morris*

v. *Morris's Trustees* (1904), 11 S. L. T. 793). But the "good" consideration of natural love and affection will not suffice. The notice need not be actual notice. A person is considered to have notice of an instrument, matter, fact or thing if (*a*) it is within his knowledge or would have come to his knowledge if proper enquiries and inspections had been made, or (*b*) in the same transaction with respect to which the question of notice arises, it has come to the knowledge of his counsel as such, or of his solicitor or other agent as such, or would have come to the knowledge of his solicitor or agent if proper enquiries and inspections had been made (Conveyancing Act, 1882, s. 3; L. P. A. 1925, s. 199). But a purchaser is not prejudicially affected by notice of any instrument or matter capable of registration under the L. C. A. 1925 which is void or not enforceable against him by reason of non-registration (L. P. A. 1925, s. 199). Non-registration will not invalidate a charge (whether in favour of the Revenue or of a limited owner) arising on a death before 1926 (L. C. A. 1925, s. 13 (2)).

2. As against a purchaser for valuable consideration or a mortgagee, real property or any estate or interest therein will cease to be charged with or liable to any Estate Duty (or Succession Duty) after the expiration of either (*a*) six years from the date of notice to the Commissioners that the successor, or any person in his right or on his behalf, has become entitled in possession to his succession or the income and profits thereof, or (*b*) twelve years from the happening of the event which gave rise to an immediate claim for the duty (F. A. 1894, s. 8 (2), incorporating Customs and Inland Revenue Act, 1889, s. 12 (1); as to the notice, *see* pp. 185–186, *supra*). As the relevant parts of the Act of 1889 operate by reference to the S. D. A. 1853, "real property" is taken to include leaseholds.

Marriage is valuable consideration for this purpose (*re Donelan's Estate*, [1902] 1 I. R. 109). The other periods mentioned in s. 12 (1) *supra*, of six years from the payment of any instalment or two years from the payment of a last instalment, do not appear to be applicable to Estate Duty.

3. A certificate of discharge, issued under s. 11 of the F. A. 1894, is void in case of fraud or failure to disclose material facts, but it is expressly provided by sub-s. (4) that a certificate, purporting to be a discharge of the whole Estate Duty in respect of any property included therein, shall exonerate a *bonâ fide* purchaser for valuable consideration without notice, notwithstanding such fraud or failure. In practice *all* certificates of discharge are treated as effective in favour of such a purchaser.

4. Where real property was subject, at the time of the death which attracted the Estate Duty, to an enforceable trust for sale without the requirement of any consent, the charge for duty, which attached to the property in its unsold state, is considered to shift, on any subsequent sale, to the proceeds of sale, so that the purchaser and the property sold are under no liability. It seems immaterial whether the purchaser has notice that duty is payable. The basis of this rule is that what passed on the death was not real property, but (in view of the conversion effected by the trust) the prospective proceeds of sale. The rule does not apply, therefore, where the trust for sale arises on or after the death.

5. In the case of registered land, where the death took place before 1926, a *bonâ fide* registered purchaser for full consideration in money or money's worth is not affected by any liability to Estate Duty (or Succession Duty), although he may have extraneous notice thereof unless (*a*) the liability is noted on the register, or (*b*)

the title is possessory and the liability was subsisting or capable of arising at the time of first registration, or (*c*) the title is qualified and the liability is among the exceptions (L. T. A. 1897, s. 13). Where, on the death of a registered proprietor, his personal representative is registered as such, notice of liability to duty is not to be entered (Land Transfer Rules, 1903, r. 209).

6. A registered disposition of registered land, in favour of a purchaser in good faith for valuable consideration, takes effect free from all claims for death duties in connection with a death after 1925, notwithstanding that notice of the claim may be entered on the register. "Purchaser" includes a lessee, mortgagee or other person who acquires any interest in or charge on land for valuable consideration. "Valuable consideration" includes marriage, but not a nominal consideration in money. (L. R. A. 1925, ss. 3 (xxi) and (xxxi) and 73 (1).) If notice of the claim has been entered and is to be over-ridden by a disposition, the Registrar notifies the Commissioners and cancels the notice (s. 73 (8)). The disposing party remains personally liable, and the duty is also a charge on the proceeds (s. 73 (5)), but the purchaser is not concerned with that charge.

7. In the case of non-registered land in England and Wales, a purchaser (including a lessee, mortgagee or chargee by way of legal mortgage) who acquires a legal estate or charge in good faith for money or money's worth, takes free from any charge for death duties unless (*a*) it is registered as a Land Charge, or (*b*) it attached before 1926 and the purchaser had notice (L. P. A. 1925, ss. 17 (1) and 205 (1) (xxi)). Under a parallel provision, a charge for death duties arising after 1925 is void as against a purchaser (including a mortgagee or lessee) of a legal estate for money or money's worth, unless it is registered as a Land Charge in the

appropriate register before the completion of the purchase (L. C. A. 1925, ss. 13 (2) and 20 (8)). The ordinary purchaser of land within the scope of the Acts, who makes the proper searches and finds nothing registered, is therefore completely protected from liability for duties in connection with a death after 1925, although he may have extraneous notice that duties are outstanding. The provisions of the L. P. A. 1925, construed literally, seem to apply only to charges in existence at the time of the purchase, and not to charges arising subsequently, *e.g.*, where there has been a gift of the property within three years, or a gift with reservation, or a surrender of a life interest, and the donor or surrenderor dies after the purchase. But the protection afforded by the L. C. A. 1925, which is at least equally efficacious, is available whether the charge arises before or after the purchase, provided that it arises after 1925. The vendor remains personally liable, and the duty is also a charge on the proceeds of sale (L. P. A. 1925, s. 17 (2)).

8. In favour of a purchaser (including a mortgagee or lessee) for valuable consideration (including marriage but not a nominal consideration in money), an assent or conveyance given or made by a personal representative bars the right of such representative to recover the estate or interest to which the assent or conveyance relates, or to be indemnified out of such estate or interest against any death duties (A. E. A. 1925, ss. 36 (9) and 55 (1) (xviii)).

J. Facilities for Raising Estate Duty.

It has been mentioned that the executor is *authorised* to pay Estate Duty for which he is not accountable (1) if the property is under his control by virtue of a testamentary disposition by the deceased, or (2) if the accountable parties request him to make the payment

(F. A. 1894, s. 6 (2)). This means that he is authorised to use the free estate for the purpose, though, of course, it must be recouped if occasion requires. For example, the executor may, as a matter of convenience and by arrangement with the trustees, advance the duty on settled property of which the deceased was tenant for life.

In the case of property not passing to the executor as such, any person authorised or required to pay the duty is empowered, *whether the property is vested in him or not*, to raise the amount of the duty, with any interest and costs properly paid or incurred by him, by the sale or mortgage of the property or any part thereof, or by a terminable charge thereon (F. A. 1894, s. 9 (5)). The authority of the Court is not necessary for the exercise of these powers. They may also be utilised for the adjustment of duty after payment (p. 232, and as to Scotland, pp. 96–99).

Under the Trusts (Scotland) Act, 1921, a trustee having power to invest in real securities, has power, unless expressly forbidden by the trust, to invest on any charge created for payment of Estate or other Government Duty under the F. A. 1894 or F. A. 1910.

The L. P. A. 1925, s. 16 (3), and L. R. A. 1925, s. 73 (10), confer on a personal representative, estate owner or registered proprietor, accountable under those Acts, for the purpose of raising the duty *and the costs of raising the same*, all powers which are by any statute conferred for the purpose of raising the duty. These provisions are not thought to prevent or limit, by inference, the use of the powers, as regards land in England and Wales, by an accountable person who is not a personal representative, estate owner or registered proprietor. Such a person is not accountable under these Acts and is presumably not affected by them.

In the case of settled property, any money arising from the sale thereof, or money held upon trust to lay

out upon the trusts of the settlement, or capital moneys arising under the Settled Land Acts, may be expended in paying any Estate Duty in respect of property comprised in the settlement and held upon the same trusts (F. A. 1894, s. 9 (7)). Thus the Estate Duty in respect of heirlooms may be paid out of capital moneys arising under the settlement of the lands which the heirlooms accompany (*re Egmont's Settled Estates, Lefroy* v. *Egmont,* [1912] 1 Ch. 251). As regards land in England and Wales, this provision is now superseded by the L. P. A. 1925, s. 18 (1), and L. R. A. 1925, s. 73 (12). Section 18 (1) of the first-mentioned Act, which applies to registered as well as unregistered land, provides that capital money liable to be laid out in the purchase of land to be settled in the same manner as the land in respect of which any death duties may have become payable, and personal estate held on the same trusts as land subject to a trust for sale may, by direction of the tenant for life, statutory owner or trustee for sale who is accountable, be applied in paying the duties and costs chargeable in respect of such land. This course may be adopted although the duty is only payable in respect of an interest in the land which is, or is capable of being, over-reached by a conveyance to a purchaser. Section 73 (12) of the L. R. A. is to the same effect, except that the procedure may be adopted by the direction of "the person accountable." It would seem that a settled land executor can, where the land is registered, but cannot in other cases, require the death duties on the land to be discharged out of capital moneys in the hands of the trustees of the settlement.

It will be noted that these provisions apply to personal estate devolving with land held on trust for sale, as well as to capital moneys under the S. L. A. 1925.

Payment in this manner will not affect the ultimate incidence of the duties. Where they would not

otherwise fall on the capital money, etc., they must be repaid (*see* p. 230).

K. Incidence of Duty—No Express Direction.

Free Personal Estate in Great Britain.

The Estate Duty in respect of the deceased's free personal estate in Great Britain (including leaseholds and reversionary interests in personalty) is a testamentary expense, and is consequently payable in the same order of administration as other testamentary expenses, *e.g.*, out of undisposed-of realty in priority to personalty specifically bequeathed (*re Pullen, Parker* v. *Pullen,* [1910] 1 Ch. 564). There is no apportionment of such duty between pecuniary and residuary legatees, the burden falling wholly on the latter (*re Webber, Gribble* v. *Webber,* [1896] 1 Ch. 914).

The rule in *re Pullen* involves curious results if it is to be applied in all cases. If the only property remaining after payment of debts is personalty bequeathed specifically to *A* and realty devised specifically to *B*, the rule requires that *B* shall bear a rateable part of the Estate Duty on the personalty, notwithstanding that he has to bear the whole of the duty on the realty.

The two items of property in the above example rank equally in the order of administration both under the law in force in England before 1926 and under the A. E. A. 1925, but in many cases (*e.g.*, where the residuary personal estate and residuary real estate are given to different persons) the question which order must be adopted for the present purpose is important. In view of the clear provision of the A. E. A. 1925, s. 53 (3), that nothing in the Act shall alter the incidence of any death duties, it would appear that the old order still holds good. The point, however, is open to doubt:

it may be suggested in favour of following Part II of the First Schedule to the Act—(1) that the "incidence of any death duties" is finished with when the duty has been classified as a testamentary expense: how testamentary expenses are met is a separate matter. (2) The Schedule provides expressly that the liability of land, to answer the duty thereon in exoneration of other assets, is unaltered. It does not provide against alteration in the extent to which land may have to bear the duty on personalty. *Expressio unius est exclusio alterius.* (3) It can hardly have been intended and would be most inconvenient that testamentary expenses should be payable partly in one manner and partly in another.

The personal liability of the executor embraces not only the free personalty in this country but also all *other personal property*, wherever situate, of which the deceased was competent to dispose. The other property, as will appear below, is required to bear its own burden, but, so far as the relative duty cannot in fact be raised or recovered out of such property or from the trustees or owners, the loss will lie where it falls, on the free personal estate in this country. If necessary the executor must pay over the whole of such estate to the Revenue on account of the duty in respect of the *other personal property*. It may be worth noting that the free real estate in such a case would escape (subject only to its own burden of duty), for the executor is not liable for duty on *other personal property* in excess of the assets which he has or ought to have received as *executor, i.e.*, the free British personalty. The free personalty *may* be used also for the purpose of the payments which the executor is authorised but not required to make (*see* p. 169)—otherwise no purpose would be served by the authorisation. Here again, if recoupment cannot be obtained, the loss will lie where it falls. The duty in these cases

is not a testamentary expense, but it must presumably be borne (if the free estate is not reimbursed) in the same manner as testamentary expenses.

Beyond this the free personalty is not liable for duty except by an express direction in the will or disposition. The Revenue cannot, for example, resort to it for Estate Duty in respect of settled property or gifts, or even in respect of the free real estate. It is within reach of taxation only so far as the executor is accountable under the F. A. 1894, the Property Acts of 1925 not having affected the incidence of duty.

Three exceptional cases may be noted: (1) Undivided shares in freehold land, if converted into personalty *only* by the operation of a *statutory* trust for sale, are still real property for death duty purposes, and accordingly they bear their own burden of Estate Duty (L. P. A. 1925, s. 16 (4) and (5); *re Wheeler, Jameson* v. *Cotter* (1929), 141 L. T. 322).

(2) In the case of such works of art and other chattels as are exempted from duty until sold (pp. 264–266), the duty is a charge on the proceeds of sale and is payable thereout by the person who sells or for whose benefit the sale takes place. A clear positive direction is necessary to throw the burden on to the residuary estate, even if the articles are sold before the actual issue of the Treasury certificate of exemption, in the absence of which the executors alone would be accountable and the Estate Duty would be payable out of residue in the ordinary way (*re Scott, Scott* v. *Scott,* [1916] 2 Ch. 268, where the chattels were in fact abroad, but the decision was based on their nature as works of art, etc., not on their locality). Such duty is not covered by a direction for payment out of residue of the Estate Duty payable "upon or by reason of" the testator's death (*re Leconfield, Wyndham* v. *Leconfield* (1904), 90 L. T. 399). It has been held further that even a general

direction that all legacies, whether pecuniary or specific, shall be free of Estate Duty, is insufficient (*re Swaythling, Samuel* v. *Swaythling* (1912), 29 T. L. R. 88), but this decision was mentioned with disapproval by the Court of Appeal in *re Scott.*

(3) The Estate Duty in respect of a reversionary interest in personal property held under a British settlement is a testamentary expense, whether it is paid at once on the reversionary value or postponed until the interest falls into possession. In the latter event, if the reversion is specifically bequeathed, the executor should make provision out of the residuary estate for the future liability. Some complication arises where the *corpus* of the settled property passes on the reversioner's death, *e.g.*, where the trusts are for *A* for life, then for *B* for life, then for *A* absolutely. When in such circumstances *A's* executor had paid Estate Duty on the reversionary value and *B* had paid Estate Duty on the value of her life interest, it was held that the former payment must come out of *A's* residuary estate, notwithstanding that the trustees or *B* might have been held accountable for the whole of the duty (*re Avery, Pinsent* v. *Avery*, [1913] 1 Ch. 208). According to the present practice, however, the duty in such a case is levied, once for all so far as *A's* death is concerned, on the *corpus* of the property passing under the settlement. It is usually paid by the trustees out of the *corpus*, and, as the payment covers *A's* reversionary interest, his executor makes no direct payment to the Revenue in respect thereof. Possibly, however, when the reversion falls in, diminished to the extent of the duty paid by the trustees, a specific legatee, relying on *re Avery,* could require *A's* executor to make good to him so much of the duty as the executor might have been compelled to pay. The Estate Duty in connection with *B's* death is on a different footing: that will be

payable out of the settled property and borne ultimately by the person entitled to the reversion in any event.

Other Cases Generally.

Except as regards the free personal estate of the deceased in Great Britain, and subject always to any direction in the will or disposition, it is an almost universal rule that every beneficiary bears the Estate Duty attributable to the property which he takes. The duty in such cases is (*a*) a charge on the property, and (*b*) not a testamentary expense. The extent of the charge has been dealt with already, and it will be found, by process of elimination, that to the same extent the duty is not a testamentary expense. Thus it has been held expressly that testamentary expenses do *not* include Estate Duty on (1) free moveable property outside Great Britain (*re Scull, Scott* v. *Morris* (1917), 87 L. J. Ch. 59), (2) personal property over which the deceased exercised a general power of appointment by his will (*O'Grady* v. *Wilmot,* [1916] 2 A. C. 231), (3) free real estate (*re Sharman, Wright* v. *Sharman,* [1901] 2 Ch. 280)—even to the extent to which it is used for payment of legacies (*re Spencer Cooper, Poë* v. *Spencer Cooper,* [1908] 1 Ch. 130), and (4) donations *mortis causa* (*re Hudson, Spencer* v. *Turner,* [1911] 1 Ch. 206). Other cases follow *a fortiori.*

Conversely, property passing under one title is not answerable for duty in respect of property passing under another title. And as between the Revenue and other parties, the free real estate is liable only for the duty attributable thereto, for the liability of the executor in respect of personal property is limited to the amount of the assets which he has or ought to have received *as executor* (F. A. 1894, s. 8 (3)), and nothing in the Property Acts of 1925 has made any difference to this (L. P. A. 1925, s. 16 (4); A. E. A. 1925, s. 53 (3)).

As between the beneficiaries, however, the free real estate may, as already stated, have to bear a proportion of the testamentary expenses, including the Estate Duty on the free personalty.

Regard must be had to the substance of a benefit rather than the form. If a testator directs that a company be formed to take over his real or heritable property, the duty thereon must be borne by the persons to whom the shares in the company are given, just as if the property had been devised to them directly (*Anderson's Trustees* v. *Matthew* (1915), 53 S. L. R. 320).

Where a beneficiary, under an option in the will, takes real property (or other property on which the duty is a charge) as part of his share of residue, the relative duty is payable wholly by him (*re Jolley, Neal* v. *Jolley* (1901), 17 T. L. R. 244). If, however, an allocation of this kind is made by the executors under the A. E. A. 1925, s. 41, or otherwise, the duty on all parts of the residue ought presumably to be paid out of the general fund.

A charge for unpaid Estate Duty still holds good as between beneficiaries even after the property has again devolved on another death. Thus where real property passes under the will or intestacy of *A* to *B* absolutely, and under the will or intestacy of *B* to *C*, *C* takes it subject to a continuing charge for any outstanding duty in connection with the death of *A*, and is not entitled to have such duty discharged out of *B's* personal or residuary estate (*re Bowerman, Porter* v. *Bowerman*, [1908] 2 Ch. 340; *see also* A. E. A. 1925, s. 35). But if the duty was actually paid out of *B*'s personal estate in his lifetime, it would not remain a charge on the real property in favour of the persons taking *B's* personalty on his death, even where *B* was a lunatic (*re Hole, Davies* v. *Witts*, [1906] 1 Ch. 673) or an infant

(*re Wilson*, *Wilson* v. *Clark*, [1916] 1 Ch. 220). *C* will of course bear in any event the duty in connection with *B's* death. In the case of settled property, however, the charge may be kept alive after payment of the duty. Where a fund was settled on trust for *D* for life, then for *E* for life, then as to part as *E* should appoint, and as to the residue on other trusts, the Estate Duty paid in *E's* lifetime in connection with the death of *D* was held to be apportionable after *E's* death between the appointed part of the fund and the residue thereof (*re Charlesworth*, *Tew* v. *Briggs*, [1912] 1 Ch. 319).

When any allowance against Estate Duty is available in respect of property on which the duty is a charge, it relieves the persons taking that property, not the estate generally. Only the net amount payable is a charge. A devisee of real property or a legatee of foreign property is therefore entitled to the benefit of any allowance for quick succession or dual taxation relating thereto.

It is provided by the F. A. 1894, s. 20 (2), that nothing in the Act shall create a charge for Estate Duty on any property situate in a British possession while so situate. "Property" includes the proceeds of sale of property and the investments for the time being representing the same (F. A. 1894, s. 22 (1) (*f*)). If the original assets, or the proceeds, etc., are removed from the specified territories, a charge for duty will at once attach. But unless and until they are removed there appears to be no provision requiring that the beneficiary entitled thereto shall bear the relative British duty. He is not accountable to the Revenue: the British executor alone is liable. Section 9 (4) of the Act provides that duty paid by the executor may be recovered by him "where occasion requires," but unless the duty is a charge there seems to be no "occasion," and the burden presumably lies where it falls—on the residuary British personalty.

The provisions of s. 14 (1) of the Act as to apportionment (dealt with below) are applicable to the property under discussion. A rateable proportion of the British duty could therefore be recovered from a person entitled to a sum charged on such property.

Estate Duty on a gift *inter vivos* falls on the donee. Where, therefore, a gift operates *pro tanto* to adeem a bequest, the ademption is limited to the value of the gift less the duty thereon (*re Beddington, Nicholls* v. *Samuel,* [1900] 1 Ch. 771). It has also been held that duty must be deducted in ascertaining the amount to be taken into account under a direction to bring into hotchpot the "value" of a gift (*re Crocker, Crocker* v. *Crocker,* [1916] 1 Ch. 25). Where advances, made more than three years before the death out of settled property, have to be brought into hotchpot, they should be brought in against the *gross* fund before deducting the duty, so that in the result each beneficiary will bear the duty actually attributable to what he takes on the death (*re Tollemache, Forbes* v. *Public Trustee,* [1930] W. N. 138).

On general principles, duty on property passing under a nomination by the deceased should always be borne by the nominee. But in certain cases where nomination is permitted, there are provisions that the property shall be "for the purposes of Estate Duty treated as passing under the will or intestacy of the deceased" (Savings Certificates Regulations, 1919, Art. 45 (1); Post Office Savings Bank Regulations, 1921, Art. 88 (1), etc.). It is thought, however, that such provisions relate only to the liability of the personal representative to the Revenue, and to the question of aggregation, and do not affect the rights of the beneficiaries *inter se.*

On a sale of timber, whether felled or standing and, if standing, with or apart from the land, the Estate Duty in respect of the proceeds is a charge thereon. If the

seller is a tenant for life without impeachment of waste, and therefore entitled to retain the entire proceeds for his own use, the duty is payable by him and not out of capital moneys (*re Smyth, Edwards* v. *Smyth*, [1918] 1 Ch. 118). If the proceeds are partly capital moneys and partly receivable by a life tenant, the duty should be apportioned.

Apportionment.

In all cases where Estate Duty is a charge it is apportionable between the persons who become entitled either to the actual property or to any benefits payable thereout. A widow entitled to terce, for example, bears a proportionate part of the duty on her husband's heritable estate (*Ross* v. *Ross's Trustees* (1901), 9 S. L. T. 340). The same principle applies as between pecuniary and residuary legatees, and as between the persons entitled respectively to a rent-charge or portion and the settled property subject thereto.

In the type of case where an apportionment could possibly not be made on general principles, it is authorised expressly.—A person who has properly paid the Estate Duty, on any property not passing to the executor of the deceased as such, may recover a rateable part from the person entitled to any sum charged on such property (whether as capital or an annuity or otherwise), under a disposition not containing any express provision to the contrary (F. A. 1894, s. 14 (1)). This applies not only to duty in connection with the death on which the sum becomes payable, but also to any unpaid duty in connection with an earlier death (*re Portman* (*No.* 2), [1925] Ch. 294). Where the benefit in question is not in the category of a "sum charged" (*e.g.*, where it is an ordinary pecuniary legacy), the liability of the beneficiary to bear a proportion of the duty may be based (*a*) in many cases on the ground that he is himself an accountable person, and therefore bound

in equity to contribute if his obligation is discharged by another (*Berry* v. *Gaukroger,* [1903] 2 Ch. 116), or (*b*) in all cases on the ground that the charge for Estate Duty created by the F. A. 1894, s. 9 (1), is in its nature a burden which falls upon all the interests in the property charged, and must be borne accordingly (*re Hicklin, Public Trustee* v. *Hoare,* [1917] 2 Ch. 278).

In applying this rule to a pecuniary legacy, it is necessary first to ascertain the source from which, under the terms of the will or the general law as to the administration of estates, the legacy falls to be paid. If and so far as the testator's free personal estate in Great Britain is the source, the legatee takes free from the Estate Duty leviable on the testator's death—provided, of course, that the residuary estate is not exhausted (*re Webber, Gribble* v. *Webber,* [1896] 1 Ch. 914). If and so far as any other property (*e.g.*, moveable property abroad or real property) is the source, the legatee bears his share of the burden. Thus, if a testator gives his real and residuary personal estate to his trustees on trust for sale, and directs them to pay legacies out of the mixed fund thereby created, there will be a two-fold apportionment: the legacies will be payable rateably out of the real and personal property, and so far as they are payable out of the former must bear their due proportion of the duty (*re Spencer Cooper, Poë* v. *Spencer Cooper,* [1908] 1 Ch. 130).

The question of the source for payment of legacies may possibly bring into play the provision of the A. E. A. 1925 that the order of administration thereby introduced is not to affect the incidence of death duties (pp. 203–204, *supra*). Suppose an English will says merely, "I give a legacy of £1,000 to *A* and all the residue of my property to *B*." The testator leaves ample personalty and ample realty. Before 1926 the legacy would have been payable out of the personalty alone and

would have been free of Estate Duty. Now it is payable out of the realty and personalty alike. In the absence of judicial authority the question whether such a legacy must still be treated, for the special purpose of Estate Duty, as issuing from the personalty only, cannot be regarded as free from doubt; but it is thought that, despite the proviso against alteration of incidence, the case must be dealt with on the lines of *re Spencer Cooper*. The A. E. A. 1925 has altered the very nature of the legatee's interest, and, though the rules as to incidence are themselves unaltered, they must be applied on the basis of the altered facts.

Where a legacy is payable on the death of a life tenant or annuitant, out of the property thereby set free, the Estate Duty in connection with *that* death will always be a charge and apportionable accordingly (*Berry* v. *Gaukroger*, [1903] 2 Ch. 116; *re Hicklin, Public Trustee* v. *Hoare*, [1917] 2 Ch. 278).

In the case of appointments under powers, Estate Duty is apportionable between the appointees of specific sums and the appointees of the residue of the fund (*re Orford, Cartwright* v. *Del Balzo,* [1896] 1 Ch. 257; *re Chisholm, Goddard* v. *Brodie,* [1902] 1 Ch. 457). This will be so whether the power is special or general and whether the property is personalty or realty.

The case of *re Orford* established that a sum appointed out of a settled fund is a "sum charged" within the meaning of s. 14 (1), *supra*. That expression, therefore, has a wider meaning than in conveyancing, but it does not include every kind of benefit derived out of property. Thus the persons entitled to the benefit of a trust for discharging incumbrances on other property out of the rents of Blackacre are not "entitled to any sum charged on" Blackacre, "whether as capital or as an annuity or otherwise"; the duty on Blackacre must be paid wholly out of the *corpus* of Blackacre (*re*

Stamford and Warrington, Payne v. *Grey,* [1910] 2 Ch. 83).

In the case of an option to purchase real or other property on which Estate Duty is a charge, for less than its value, the duty is presumably apportionable, according to value, between the purchaser and the purchase money. But where a devisee of real property sold it, in pursuance of a direction in the will which was actually void for repugnancy, at a specified price below the value, to a designated person, the latter was held not to be liable for any part of the duty (*re Cockerill,* [1929] 2 Ch. 131).

Where property passes only to a limited extent and is taxable accordingly, no share of the duty falls to be borne by the person whose interest has not been affected. Where duty was paid on a settled fund, less the "slice" required to produce a pre-existing and continuing annuity to *A* (which annuity was liable to abate if the total income of the fund fell below a specified amount), it was held that (1) the interest on charges created for raising the duty must be paid out of the income of the beneficiaries other than *A,* and (2) after payment of the charges the "total income," for the purpose of abatement of *A's* annuity, was the actual income plus the interest which would be payable if the charges were subsisting (*re Tattersall, Public Trustee* v. *Tattersall,* [1918] 2 Ch. 243, but see *re Palmer, Palmer* v. *Palmer,* [1916] 2 Ch. 391).

When an apportionment of duty has been made against a particular beneficiary, he is not entitled by the foregoing provisions to make a further apportionment against a person in whose favour he has created a sub-charge: the rights of persons entitled between themselves to various parts of the original sum are left to be determined by their contractual arrangements (*re Drake, Drake* v. *Wilson,* [1926] Ch. 559).

Where a Scottish institute or heir of entail in possession, who is not entitled to disentail without obtaining the consent of a subsequent heir or heirs or having such consent valued and dispensed with, has paid Estate Duty in respect of the entailed estate, and afterwards disentails, he may deduct a rateable part of the duty from the payment in respect of the consent (F. A. 1894, s. 23 (17)).

Capital and Income.

Where a testator's residuary estate is settled, the Estate Duty payable thereout and the interest on such duty should in strictness be treated as a single liability, and be apportioned in accordance with the rule in *Allhusen* v. *Whittell* (1867), L. R. 4 Eq. 295. The life tenant should be deprived of the income of such a sum as, with interest from the date of death until payment, at the average rate earned by the property during that period, would be sufficient to satisfy the liability (*re McEuen, McEuen* v. *Phelps*, [1913] 2 Ch. 704; *re Wills, Wills* v. *Hamilton*, [1915] 1 Ch. 769). But the rule need not be followed slavishly (*re McEuen*), and in many such cases it might be permissible merely to charge the life tenant with the interest actually paid on the duty (*cf. re Waller, Margarison* v. *Waller,* [1916] 1 Ch. 153, where the Court approved an apportionment of Settlement Estate Duty and interest on this basis).

If the estate has already been fully administered (*e.g.*, when the duty is payable on a life tenant's death) or if no question of administration arises (*e.g.*, when the property is settled by deed), the duty is ordinarily payable out of capital and the relative interest out of income. A life tenant, to whom the property passes, cannot debit the interest against capital by means of the power conferred on him as an accountable person, of raising duty and interest by sale or mortgage

of the property; nor can he do so by means of the limited owner's charge (F. A. 1894, s. 9 (5) and (6); *re Howe, Howe* v. *Kingscote,* [1903] 2 Ch. 69; *Robertson, Petitioner* (1914), 1 S. L. T. 492). If the duty is raised by mortgage, a life tenant must keep down the mortgage interest. And where heirlooms are settled to accompany lands, the interest on the duty in respect of the heirlooms is payable out of the rents (*re Egmont, Lefroy* v. *Egmont,* [1912] 1 Ch. 251).

Annuities.

When a proportion of the Estate Duty on any property falls to be borne by an annuitant, he should normally be treated as tenant for life of a "slice" of the property sufficient to produce his annuity, and be required merely to pay interest on the duty attributable to that "slice"—the duty itself being paid out of the *corpus* of the property (*re Parker-Jervis, Salt* v. *Locker,* [1898] 2 Ch. 643). For example—an estate, worth £6,000 and producing £240 per annum, was settled on *A* for life. On his death an annuity of £50 is charged thereon in favour of *B* and subject thereto the property passes to *C*. Estate Duty is payable by *C* at (say) 5 per cent. without deduction for the annuity. The "slice" of the property required to produce the annuity is $50/240 \times £6{,}000 =$ £1,250, and the relative Estate Duty is £62 10s. *B*, however, is entitled only to the income of the "slice," and can therefore be charged only with interest on the duty. The result is that *C* may deduct, from the £50 per annum, interest on £62 10s. If the duty has been raised by mortgage, the rate of interest is that payable under the mortgage. If not, the rate is that at which a mortgage could be raised.

In special cases where this formula would work unfairly, some other basis of apportionment may be necessary. Where the property consisted of freehold ground rents with early reversions, so that the

capital value was more than a normal number of years' purchase of the annual value, and a "slice" ascertained in the usual way would have been unduly large, it was ordered that the annuitant be treated as tenant for life of a capital sum, equal to the capitalised value, at the date when the annuity commenced, of a perpetual and adequately secured rent-charge; that the capital sum be treated as chargeable with Estate Duty at the rate applicable to the whole property; and that the annuitant should pay interest on this duty in the manner already described, *i.e.*, on the basis of a mortgage (*re Portman, Portman* v. *Portman,* [1924] 2 Ch. 6). This method might be appropriate also in the converse case of short-term leaseholds, where the "slice" as ordinarily calculated would be too small. There is no provision for valuing the annuity for the annuitant's life and debiting him with duty on that value.

If the annuity itself is the direct subject of taxation (*e.g.,* an annuity purchased or provided by the deceased, or a continuing annuity which is treated as *passing* on the death of one annuitant to another), the person or persons entitled to the benefit must naturally bear the whole of the duty. In very exceptional circumstances, where the property passing was the benefit of a direction to pay out of the income of the testator's residuary estate the outgoings, etc., in respect of a house and its contents, which were given to *A* for life, then to *B* for life, then on other trusts, the Court ordered that the duty in connection with the death of *A* on the benefit of the direction (not the duty on the house and contents) be paid out of the residuary estate and be recouped by means of a policy on the life of *B*; and that interest on the duty and the premiums on the policy be retained by the trustees out of the annual sum which would otherwise be payable under the direction (*re Cassel, Public Trustee* v. *Mountbatten,* [1927] 2 Ch. 275).

Non-Deductible Debts and Incumbrances.

Among the cases which may involve apportionment is that of a debt or incumbrance which is disallowed as a deduction, so that the amount is taxed with Estate Duty as part of the deceased's estate. For instance, where the deceased has charged his free real property in favour of the trustees of his marriage settlement with capital sums to be raised on his death and held on the trusts of the settlement, the executor, having paid Estate Duty on the real property without deduction, can recover a rateable part from the trustees under the F. A. 1894, s. 14 (1) (*re Hacket, Hacket* v. *Gardiner*, [1907] 1 Ch. 385). The position is the same where there is primarily a mere covenant debt, but the deceased has given a bond on his heritable property or an equitable charge on his real estate by way of security (*Alexander's Trustees* v. *Alexander's M.C. Trustees*, [1910] S. C. 637; *re Hartland, Banks* v. *Hartland*, [1911] 1 Ch. 459).

If there is a personal covenant only, the whole of the duty must be borne *primâ facie* by the deceased's estate, at any rate where he leaves sufficient free personalty to discharge the debt. The covenantees are creditors and are entitled to have their money paid to them without any deduction whatsoever (*re Gray, Gray* v. *Gray*, [1896] 1 Ch. 620; *re Chisholm, Goddard* v. *Brodie*, [1902] 1 Ch. 457; *re Dowling, Dowling* v. *Fenwick* (1913), 108 L.T. 671). In *re Dowling* the covenant was to pay a sum to the trustees of the deceased's own marriage settlement, so that if it had been paid in his lifetime he would have had a life interest and the Estate Duty in respect of the fund passing on his death would have been payable thereout. Where, however, the deceased was life tenant of a fund of personalty, out of which certain sums were to be appropriated after his death on new trusts, and subject thereto the fund

fell into his free estate, it was held that the sums were neither charges nor incumbrances but the subject of new substantive settlements under which they bore their own burden of duty (*re Meyrick, Meyrick* v. *Hargreaves,* [1897] 1 Ch. 99).

In *re Gray, re Chisholm* and *re Dowling* it seems that the deceased persons left sufficient free personalty to discharge the debts. Where the debt, although not an express charge, cannot be met except out of realty, the position is doubtful. The fact that the covenantees are creditors is not conclusive, for the same might be said in the case of a mortgage. But if sufficient personalty exists, a direction in the deceased's will, that his debts shall be paid wholly or partly out of his real estate, makes no difference (*re Gray*). The cases were all decided before the A. E. A. 1925, but the position is not thought to be changed. The Act has not affected the nature of the covenantees' rights, and nothing therein is to alter the incidence of the death duties (s. 53 (3)).

There is doubt also as to the position where the net value of an estate for Estate Duty purposes exceeds £100, but is less than the amount of the debts disallowed, so that the estate is actually insolvent. It was held in an Irish case of this kind that the non-deductible sums (one secured by mortgage, the other by personal covenant only) must bear the duty attributable thereto (*Cope* v. *Breslin,* [1903] 1 I. R. 418). Some such result seems necessary to do justice to the ordinary creditors, but the grounds for the decision are not given in the report.

State Entails.

In the case of land or chattels inalienably settled by Act of Parliament or Royal Grant, Estate Duty is charged only on the interest of the successor, and is to be assessed and paid in the same manner as Succession

Duty (F. A. 1894, s. 5 (5)). This means that the successor must bear the actual duty, and not merely the interest thereon or an equivalent loss of income on capital used to pay the duty (*re Bolton Estates Act*, 1863, [1904] 2 Ch. 289). It is provided, however, by the F. A. 1922, s. 44, that the duty in any such case may, at the option of the person authorised or required to pay the same, and notwithstanding anything contained in s. 5 (5), *supra,* or in the Act or Grant creating the settlement, be treated as a charge on and be raised and paid out of the *corpus* of such land or chattels, in which event the provisions of s. 9 of the 1894 Act (as to the charge for Estate Duty and facilities for raising the amount) are to apply. The person authorised or required to pay will normally be the successor himself. If the option is exercised he will bear only interest on the amount of the duty, if it is raised by mortgage, or a corresponding loss in income or enjoyment, if it is raised by sale. The option applies only to the duty on the actual settled property, not to the duty on rent-charges payable thereout (*re Abergavenny S. E., Abergavenny* v. *Nevill,* [1926] Ch. 465).

L. Express Directions as to Incidence.

Provisions in a will or other disposition, which affect the incidence of Estate Duty, fall roughly into two classes: directions that duty shall be paid *en bloc* from a particular source and directions that specific property, which would ordinarily bear its own burden, shall be free of duty. In the case of wills which create life interests the further question arises whether a direction (of either type) refers only to duty payable on the testator's death or to future duty also.

The most usual direction of the first kind relates to "testamentary expenses." These include the Estate

Duty on the free personal estate of the deceased in Great Britain, but no other Estate Duty (*see* p. 207). "Executorship expenses" and "testamentary expenses" are the same (*Sharp* v. *Lush* (1879), 10 Ch. D. 468, approved in *re Spencer Cooper, Poë* v. *Spencer Cooper,* [1908] 1 Ch. 130). "Testamentary expenses, including death duties" has been held not to extend the meaning of "testamentary expenses," and to exclude *inter alia* Estate Duty on the free real estate (*re Massey, Ram* v. *Massey* (1920), 122 L. T. 676). On the other hand, "my . . . testamentary expenses and duties" was construed to mean "all duties to which my estate is liable by reason of the dispositions I have made in my will," and to include *inter alia* Estate Duty on free real estate specifically devised (*re Pimm, Sharpe* v. *Hodgson,* [1904] 2 Ch. 345). "Necessary expenses connected with this trust" and similar expressions centred on the word "expenses," will not ordinarily include any Estate Duty (*Michie's Executors* v. *Michie* (1905), 7 Fra. 509; *re Grant, Nevinson* v. *United Kingdom Temperance and General Provident Institution* (1915), 85 L. J. Ch. 31; but see *re Briscoe, Royds* v. *Briscoe,* [1910] W. N. 251).

A direction in a will made before 1894, to pay out of Consols specifically bequeathed the Probate Duty in respect thereof, has been held not to apply to Estate Duty and consequently to be inoperative (*re Boxer, Morris* v. *Woore,* [1910] 2 Ch. 69). Possibly in a modern will "Probate Duty" would be regarded as a misnomer for Estate Duty.

As indicated in *re Pimm, supra,* a general reference to duties in a will relates *primâ facie* only to duties on property passing under that will, as opposed to duties on property passing under other titles. Thus "all death duties" has been held *not* to include the Estate Duty attributable to a sum of money raisable out of the testator's real estate under a covenant by him in his

daughter's marriage settlement (*re Briggs, Richardson* v. *Bantoft,* [1914] 2 Ch. 413), and "all estate or other duties other than settlement estate duties" not to include Estate Duty on a gift *inter vivos* (*re Baxter, Baxter* v. *Baxter* (1898), 42 S. J. 611). On the other hand, "Estate Duty on everything passing under this my will" was construed as covering the duty on portions appointed by the will under a special power in a settlement (*re Bath, Thynne* v. *Stewart* (1914), 111 L. T. 153). And it may be mentioned that "the Legacy and Succession Duty payable . . . *in consequence of*" the testator's death was held to include Succession Duty on property of which he was a life tenant (*Poulett* v. *Hood* (1866), 35 Beav. 234, 241).

A legacy of the amount which will be required to pay the Estate Duty on settled property of which the testator was tenant for life, bequeathed to his successor without any binding condition as to how the legacy is to be used, will not by implication prevent the successor from taking his legacy *and* charging the duty in question on the *corpus* of the settled property (*Mexborough* v. *Savile* (1903), 88 L. T. 131).

The following expressions have been treated as conferring freedom from Estate Duty on property which would otherwise have borne its own burden:—

"Clear of all deductions except Succession Duty."—In the case of portions under a deed, although made before 1894 (*re Meyrick, Meyrick* v. *Hargreaves,* [1897] 1 Ch. 99).

"Clear amount or value of £4,500" and "the like amount or value of £4,500."—In the case of appointments by will under a special power (*re Coxwell, Kinloch-Cooke* v. *Public Trustee,* [1910] 1 Ch. 63).

"Clear money."—Legacies, etc., payable out of a mixed residue of personalty and the "clear

money" to arise from a sale of realty, bore no part of the Estate Duty on such realty (*re Palmer, Leventhorpe* v. *Palmer* (1912), 106 L. T. 319).

"Free from all taxes and deductions except property tax and Legacy and Succession Duty." —In the case of a jointure appointed under a special power, although the power was created and exercised before 1894 (*re Fitzhardinge, Fitzhardinge* v. *Jenkinson* (1899), 80 L. T. 376).

"Free of any incumbrances."—In the case of an immediate specific devise (*re Nesfield, Barber* v. *Cooper* (1914), 110 L. T. 970). But the term incumbrances does not include a *future* charge imposed from an extrinsic source, such as duty payable on a subsequent death (*re Langham's Contract* (1890), 60 L. J. Ch. 110; *cf. re Drake*, p. 224, *infra*).

"Net" sums, "clear of all costs and expenses of raising the same."—In the case of appointments by deed under a general power. The reference to "costs and expenses" was considered not to cut down the meaning of "net" (*re Grant, Nevinson* v. *United Kingdom Temperance and General Provident Institution* (1915), 85 L. J. Ch. 31).

"Priority."—A testator who died before the F. A. 1914 settled a fund on *A* for life and directed payment after *A's* death of certain legacies (equal altogether to the whole fund) "in the order of priority in which the names appear in this my will so far as the money will go (No. 1 being paid first, No. 2 next, and so on)." It was held that each successive legacy was payable in full (less Legacy Duty), so that the Estate Duty fell wholly on the last legacies (*re Lomer,*

Public Trustee v. *Victoria Hospital for Children*, [1929] 1 Ch. 731).

"Without any deduction whatsoever except in respect of Income Tax."—In the case of a jointure payable under a settlement made before 1894 (*re Parker-Jervis, Salt* v. *Locker*, [1898] 2 Ch. 643; see also *re Rayer, Rayer* v. *Rayer*, [1903] 1 Ch. 685).

The following expressions have been held *not* to confer freedom from Estate Duty:—

"Cash value."—The deceased settled a fund on himself for life with remainder to his younger children and covenanted that he or his executors, etc., would make up each child's share to the "cash value of £6,000." Any excess was to fall into his estate. The children were held to be entitled to £6,000 each *less* Estate Duty (*Kekewich* v. *Kekewich* (1909), 101 L. T. 887).

"Free from incumbrances and as a first charge on . . . ."—These words in an assignment of a fixed sum, to be paid out of a reversion on its falling in, do not in themselves involve freedom from a proportion of the future duty on the death which brings the reversion into possession (*re Drake, Drake* v. *Wilson*, [1926] Ch. 559).

Nor does a mere unqualified covenant to pay a specified sum imply any indemnity from Estate Duty (*Alexander's Trustees* v. *Alexander's M.C. Trustees*, [1910] S. C. 637; *re Hartland, Banks* v. *Hartland*, [1911] 1 Ch. 459).

A pecuniary legacy payable out of the testator's personal estate in Great Britain or a specific legacy of personal property here, expressed to be "subject to any duty thereon" or "subject to death duties," is not thereby required to bear any part of the Estate Duty in connection with the testator's death, but if it is settled it bears its own duty on the death of a life tenant (*re*

Morrison, *Morrison* v. *Morrison* (1910), 102 L. T. 530; *re Brown*, *Turnbull* v. *Royal National Lifeboat Institution*, [1916] W. N. 103).

"The words 'free of all death duties' have no general meaning as applied to all wills . . . they must be construed according to the meaning given to them by the particular will under consideration. Two meanings were mentioned in argument: 'free of all death duties arising in consequence of my death,' and 'free of all death duties arising in consequence of the dispositions made by my will" (*re Wedgwood*, *Allen* v. *Public Trustee*, [1921] 1 Ch. 601). "*Primâ facie* . . . the words 'free of all duties' when used with regard to a fund, and not expressed to be with regard to successive interests in the fund, or with regard to the interests of beneficiaries in the fund, would be satisfied by applying them to the duties which would be paid at the time when the fund was handed over, and need not be extended so as to include the duties which will be payable on a subsequent devolution" (*re Fenwick*, *Lloyds Bank Limited* v. *Fenwick*, [1922] 2 Ch. 775). Thus if a legacy of £1,000 is given on trust for *A* for life with remainder to *B*, and either (1) the legacy is directed to be paid free of duty, or (2) all duties are directed to be paid out of some other fund, a clear £1,000 must be set aside, even if the amount comes out of real property. But the direction in either case is then discharged: the Estate Duty on *A*'s death comes out of the £1,000. Examples of (1) are *re Brown*, *Turnbull* v. *Royal National Lifeboat Institution*, [1916] W. N. 103—will dated 1913, testatrix died November 1914; *re Palmer*, *Palmer* v. *Palmer*, [1916] 2 Ch. 391—testator died 1913; *re Doyly*, *Vertue* v. *Doyly*, [1917] 1 Ch. 556—will dated 1911, testator died December 1914; *re Wedgwood*, *supra*—testatrix died 1913; and *re Laidlaw*, *Wilkinson* v. *Lyde*, [1930] W. N. 206—will dated 6th July, 1914,

testator died 1915. Examples of (2) are *re Gunn, Harvey* v. *Gunn*, [1916] W. N. 283—will dated 1904, testator died 1915; *re Fenwick, supra*, where the words were "all duties of every description . . . to which my estate, . . . or any part thereof, shall be liable"—testator died 1912; and *re Beecham, Woolley* v. *Beecham* (1923), 130 L. T. 558, where the words were "all death duties of every kind on every part of my estate"—will dated and testator died 1916. An example of (1) and (2) combined is *re Sarson, Public Trustee* v. *Sarson*, [1925] Ch. 31—testator died 1913.

A direction may, however, be so framed as to apply not merely to the fund which is to be set apart as the subject of a settlement but also to the interests of persons entitled in remainder under that settlement. If so, the freedom from duty will extend to duty payable on the death of a life tenant. The following expressions have been construed in this manner:—

"All legacy, annuity, succession or other duties payable in respect of all and every the benefits given by this my will" to be paid out of residue (*re Hatch, Hatch* v. *Hatch* (1916), 86 L. J. Ch. 454—testator died 1907).

"All the legacies (whether settled or otherwise)" to be "paid and enjoyed free of all death duties" and the trustee to "pay or provide for the legacies . . . and the duties thereon" (*re Stoddart, Bird* v. *Grainger*, [1916] 2 Ch. 444—testator died 1913).

"All the foregoing gifts, bequests and legacies shall be free of duty" (*re Eve, Hall* v. *Eve*, [1917] 1 Ch. 562—will dated 1910, testatrix died 1915).

"All the legacies, annuities and bequests" to be "free of Legacy Duty, Succession Duty, Settlement Estate Duty and all other death

duties" (*re Parker, White* v. *Stewart* (1917), 86 L. J. Ch. 766—will dated after F. A. 1914).

"All duties payable in respect of the said sum of £10,000 given to my trustees upon trust for the benefit of [A] . . . and her issue" to be paid out of residue (*re Tinkler, Loyd* v. *Allen*, [1917] 1 Ch. 242—testator died 1872).

"All duties, costs and expenses consequent on the probate or incidental to the execution of the trusts of this my will . . . or the due carrying out or giving effect to the dispositions made thereby or incurred in or incidental to the due administration of my estate" to be paid out of residue (*re Jones, Lambert* v. *Colbourn*, [1928] W. N. 227—will dated 1923).

A comparison of the last two groups of cases (*e.g.*, between *re Beecham* and *re Eve*) will show that the interpretation of almost any form of words for the present purpose must depend on the reading of the will as a whole and perhaps also on external circumstances. It is possible nevertheless to trace in the more recent cases a growing tendency to treat such directions as *not* covering Estate Duty on the death of a life tenant.

As regards the date of the will, the material question is whether it was made before or after the F. A. 1914, which abolished the former exemption from more than one levy of Estate Duty.

Decisions on incidence in the special case of works of art, etc., exempted from duty until sold, are noted at pp. 205–206, *supra*.

M. Adjustment of Duty Already Paid.

Where the person accountable for Estate Duty is not the beneficiary on whom the burden falls, he is most often an executor or trustee in whom the property is vested. In such cases he has merely to raise the necessary amount out of the property by sale or

mortgage. Adjustment between various beneficiaries is then mainly a matter of trust accounts. To assist in this, the accountable person may apply to the Commissioners, who, if they consider it can conveniently be done, must certify the valuation accepted by them for any class or description of property comprised in an estate (F. A. 1894, s. 8 (8)). If it is desired to keep the property intact, the executor or trustee can withhold it until the beneficiary provides or secures the amount of the duty. It will be remembered in this connection that under the Property Acts of 1925 a personal representative is not entitled to postpone an assent merely because duties are unpaid, if reasonable arrangements have been made for discharging them (p. 172); also that a conveyance of settled land may reserve a term of years by way of indemnity against unpaid duties (p. 171). Moreover an assent or conveyance will not, except in favour of the purchaser of a legal estate, prejudice the right of the personal representative or any other accountable person to recover the estate or interest to which the assent or conveyance relates, or to be indemnified against any duties to which the same would have been subject but for the assent or conveyance (A. E. A. 1925, s. 36 (9)).

When Estate Duty has been paid in respect of property on which it is a charge, a certificate of payment can be obtained from the Commissioners, specifying the property and any debts and incumbrances allowed as deductions: subject to any repayment of duty this certificate is conclusive evidence that the amount of duty mentioned therein is a first charge on the specified property, after the specified debts and incumbrances (F. A. 1894, s. 9 (2) and (3); as to the form of application for the certificate, *see* p. 311). The person who makes the payment, therefore, obtains the benefit of the charge.

The F. A. 1894 contains no *general* provision requiring beneficiaries, on whom the burden of the duty falls, personally to repay an accountable party who pays the duty in the first place. Express rights of recovery are available in the following cases:—

(1) Where Estate Duty is paid by the executor it must where occasion requires (viz., where it is a charge on the property) be repaid to him by the trustees or owners of the property; but in the case of real property it may, unless otherwise agreed, be repaid to him by the same instalments and with the same interest as might be paid to the Revenue (F. A. 1894, s. 9 (4)). And if the duty payable by a company under the F. A. 1930, s. 34 or s. 35, or any part of such duty, is paid by the executor, the company is liable, under s. 36 (2), to repay him. Apparently the costs of settling the duty are not recoverable under these provisions. If Victory Bonds have been accepted in payment by the Revenue at more than their market value, the full amount of the duty, and not merely the market value of the Bonds, is repayable (*re Ticehurst's Settlement, Wyatt* v. *Ticehurst*, [1930] W. N. 166).

(2) As previously mentioned, a person who has properly paid Estate Duty, in respect of property not passing to the executor as such, may recover a rateable part from a person entitled to any sum charged on the property (whether as capital, annuity or otherwise) under a disposition not containing any express provision to the contrary (F. A. 1894, s. 14 (1)). Any dispute as to the apportionment may be determined, upon application by any person interested, by the High Court or Court of

Session, or where the amount in dispute is under £50 by the County Court or Sheriff Court (ss. 14 (2) and 23 (1) and (2); Rules of the Supreme Court, Order LV, Rule 9c, para. 3; County Court Rules, 1903, Order XLII). The beneficiary in question is bound by the accounts and valuations settled between the accountable person and the Revenue (s. 14 (3)). Duty will normally be recovered under this section by deduction from the benefit. Section 14 does not authorise the recovery or deduction of any interests or costs.

(3) It has been mentioned that, in cases to which the Property Acts of 1925 apply, capital money liable to be laid out in the purchase of land, or personal estate held on the same trusts as land held on trust for sale, may be used for the payment of duties on the land or any interest therein. Where the duties would not, except by virtue of these provisions, be payable out of the capital money or personal estate, the amount is to be repaid to the trustees by the person liable for the duty (L. P. A. 1925, s. 18; L. R. A. 1925, s. 73 (12) and (13)). It may be repaid by the same instalments and with the same interest as may be paid to the Revenue. Moreover, repayment may still be made in this manner even if the land has been sold, so that any outstanding duty is payable immediately. The interest of the person liable to repay, remaining subject to the settlement, stands charged with the repayment. These provisions do not alter the incidence of duty: they apply to Succession Duty as well as Estate Duty, and in most cases only the former would fall to be refunded. The excess of duty,

repayable by the Commissioners, which the Acts mention in the same context, can be Succession Duty only.

It is further provided that a person having a limited interest in any property, who pays the duty in respect of that property, shall be entitled to the like charge as if the duty had been raised by a mortgage to him (F. A. 1894, s. 9 (6)). A tenant in tail in possession has a limited interest for this purpose (*re Anson, Buller* v. *Anson*, [1915] 1 Ch. 52). The amount becomes automatically a statutory charge on the property, without the issue of a certificate under s. 9 (2) or any other formality. If the charge is outstanding at the limited owner's death, it is an asset in his estate (*Lord Advocate* v. *Moray*, [1905] A. C. 531). Time will not ordinarily run, for the purpose of barring a claim under the charge, until the limited interest has ceased, for the limited owner is the person who would both pay and receive the mortgage interest. The charge does not include the costs of settling the duty.

Where the charge affects non-registered land in England or Wales, it may in certain cases be registered as a Land Charge under the L. C. A. 1925, s. 10 (1), Class C (ii). This provides for the registration of "a limited owner's charge," comprising any equitable charge acquired by a tenant for life or statutory owner under the F. A. 1894 or any other statute, by reason of the discharge by him of any death duties or other liabilities, where the statute gives special priority to the charge. "Tenant for life" and "statutory owner" are defined by the L. C. A. 1925, s. 20 (13), and S. L. A. 1925, s. 117 (1) (xxvi) and (xxviii). Despite the title "limited owner's charge," Class C (ii) is not confined to charges acquired under the F. A. 1894, s. 9 (5), for the statutory owner would usually have to rely on s. 9 (1): on the other hand it does not include all the charges arising

under s. 9 (5), for a person having a limited interest is not necessarily a tenant for life. If not registered, the charge may be void as against a purchaser (L. C. A. 1925, ss. 13 (2) and 14 (2)). In the case of registered land a notice can possibly be registered under the L. R. A. 1925, s. 59 (2), but in view of s. 49 (2) it is not clear whether this is permissible.

A limited owner can apparently require the execution of a legal mortgage to him, to give effect to his charge, before the execution of a vesting deed or vesting assent in his favour (S. L. A. 1925, s. 8 (7)).

In the case of property not passing to the executor as such, any person who has paid the Estate Duty, being authorised or required so to do, is empowered, whether the property is vested in him or not, to raise the amount of the duty, with interest and costs properly paid or incurred, by the sale or mortgage of the property or any part thereof or by a terminable charge thereon (F. A. 1894, s. 9 (5)). The L. P. A. 1925, s. 16 (3), and L. R. A. 1925, s. 73 (10), expressly confer on a personal representative, estate owner or registered proprietor accountable under those Acts, for the purpose of raising the duty and the costs of raising the same, all powers which are by any statute conferred for the purpose of raising the duty. The F. A. 1930, s. 36 (2), gives a company, when accountable under that Act, all the powers conferred on accountable persons by the Act of 1894.

The person to whom the powers are given has the choice as to which he will use (*Turnbull* v. *Turnbull*, [1910] S. C. 766).

As to the operation of s. 9 (5) in Scotland, *see* pp. 96–99, *supra*.

CHAPTER IV.

EXEMPTIONS FROM ESTATE DUTY AND ALLOWANCES.

Exemptions from Estate Duty are conferred in the following cases:—

(1) Estate not exceeding £100 in value.
(2) Certain gifts *inter vivos*.
(3) Immoveable property situate outside Great Britain.
(4) Moveable property so situate where the deceased owner died domiciled out of Great Britain.
(5) War securities held by foreigners.
(6) Property held by the deceased merely as trustee.
(7) Property held by any person as the holder of an office or as the recipient of charity or as a corporation sole.
(8) Property passing by reason of a sale or lease for full money consideration.
(9) Interests in expectancy sold or mortgaged before the Act under which the duty is leviable.
(10) Settled property on which Estate Duty was paid on the death of the deceased's spouse.
(11) Similar cases where Probate Duty or Account Duty was payable.
(12) Real estate to the rents of which the deceased was entitled in right of his wife.
(13) Property settled by the deceased's spouse before the F. A. 1894, reverting to the settlor for life.

(14) Reverter to settlor.
(15) Interests in settled property which fail before they become interests in possession.
(16) Enlargement of interest retained by a settlor.
(17) Property of common seamen, marines, soldiers and airmen who are killed or die in His Majesty's service.
(18) "Killed in war"—conditional remission.
(19) Pensions and annuities granted by the Indian Government to widows and children of deceased officers.
(20) Assets administered under the Regimental Debts Act, 1893, not exceeding £100.
(21) Similar exemption under the Navy and Marines (Property of Deceased) Act, 1865.
(22) Gratuities.
(23) An annuity not exceeding £25, purchased or provided by the deceased.
(24) Works of art, etc., given for national purposes.
(25) Similar articles, until sold.
(26) Similar articles sold to certain public bodies.
(27) Advowsons and church patronage.
(28) Timber, until sold.

Allowances against Estate Duty are given in respect of the following matters:—

(29) Certain duties paid before the F. A. 1894.
(30) Settlement Estate Duty.
(31) Duty paid in a British possession.
(32) Quick succession.
(33) "Margin" cases—slight excess over a "step" in the scale of rates.
(34) Agricultural property.

1. An estate not exceeding £100 in value is not chargeable with Estate Duty, as no rate of duty is prescribed (*see also* Revenue (No. 2) Act, 1862, s. 5). This is so even where there is other property passing, so long

as either the property not exceeding £100 or the other property is expressly exempted from aggregation.

It may be mentioned that there is no corresponding exemption from the requirement of a grant of representation: *see* as to this pp. 282 and 285–289.

2. The following gifts *inter vivos* are not liable to Estate Duty:—

(*a*) Gifts made in consideration of marriage.

(*b*) Gifts which were part of the normal and reasonable expenditure of the deceased.

(*c*) Gifts which do not exceed £100 in the case of any one donee.

NOTE.—Exemptions on the above grounds do not apply to the surrender of a life interest by way of gift.

(*d*) Gifts for public or charitable purposes completed more than one year before the death, where the deceased retained no benefit.

(*e*) Gifts completed more than three years before the death where the deceased retained no benefit.

(*f*) Gifts completed as in case (*d*) or (*e*), where the benefit retained by the deceased terminated more than one year or three years before the death.

The above exemptions are all conferred or implied by the F. A. 1910, s. 59.

(*g*) Property settled by a person in his lifetime, on trust for immediate accumulation and ultimate transfer to the National Debt Commissioners, for the reduction of the National Debt—unless the Treasury disclaim the interest of the Commissioners (F. A. 1928, s. 30 (2)), and absolute gifts to the Commissioners, made during the donor's lifetime, for the reduction of the National Debt (s. 30 (3)). This exemption, which is relevant only where the donor dies within twelve months of the disposition, does not apply either (*a*) where a life interest is

reserved to the donor or conferred on any other person, or (*b*) where a testator gives property by his will on trust for the reduction of the National Debt. In the latter case, Estate Duty is payable on the property as part of the deceased's estate, but no Legacy Duty or Succession Duty is claimed.

See, as to gifts *inter vivos* generally, pp. 34–48.

3. Immoveable property outside Great Britain is not liable to Estate Duty unless it forms part of the assets of a British partnership or is subject to a trust for sale and vested in British trustees under a British settlement (*see* pp. 106, 108 and 110).

4. Moveable property so situate is not liable on the death of an absolute owner domiciled abroad. Where it is settled and passes on the death of a limited owner or where it is deemed to pass under some other head (*e.g.*, as an interest provided by the deceased), it is in general exempt unless it forms the subject of a British trust (*see* pp. 111–115).

5. The Treasury was empowered during the continuance of the Great War and twelve months thereafter to issue any war securities free from taxation. Such securities are not now liable to death duties so long as it is shown in manner directed by the Treasury that they are in the beneficial ownership of persons who are neither domiciled nor ordinarily resident in Great Britain or Northern Ireland (F. (No. 2) A. 1915, s. 47). The principal outstanding securities to which the section applies are—

5 per cent. War Loan, 1929–1947,
4 per cent. War Loan, 1929–1942,
4 per cent. Funding Loan, 1960–1990,
4 per cent. Victory Bonds, and
War Savings Certificates issued before 1st September, 1922.

The term "domiciled" means having a permanent home there or, having had such a home, residing elsewhere without having abandoned all intention of returning. The subject is more fully discussed at pp. 388–389, *infra*. The term "ordinarily resident" means habitually resident or resident in the ordinary course of a person's life; a series of visits may constitute ordinary residence, even if the time is spent at hotels and comprises less than six months of each year (*Levene* v. *Commissioners of Inland Revenue*, [1928] A. C. 217; *Commissioners of Inland Revenue* v. *Lysaght*, [1928] A. C. 234).

A similar power was conferred in connection with a loan in the United States of America (American Loan Act, 1915, s. 1 (3)) and in connection with securities issued in that country by a municipal corporation, county council or other local authority in the United Kingdom for the purpose of raising any money which they are authorised to borrow, if issued under the authority of the Treasury (F. A. 1916, s. 63). These securities are not liable to British death duties except where they are held by persons domiciled in Great Britain or Northern Ireland or by British subjects ordinarily resident in those countries.

"Beneficial ownership" for these purposes need not be absolute ownership. A life interest in possession is sufficient, but not a reversionary interest. In effect the exemption depends on the domicile and ordinary residence of the person who was entitled to the income of the securities immediately before the death. The exemption would not, however, apply on the death of a partner in a business which included these securities among its assets. The deceased partner would not in such circumstances be entitled to any specific holding of such securities.

The power of the Treasury to issue securities free from taxation came to an end on the 31st August, 1922.

6. No Estate Duty is payable in respect of property held by the deceased as trustee for another person under a disposition either (*a*) not made by the deceased, or (*b*) made by the deceased more than three years before his death, where possession and enjoyment were *bonâ fide* assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise (F. A. 1894, s. 2 (3), as amended by F. A. 1910, s. 59 (1)). In the result no duty is leviable in connection with the death of a trustee who has no beneficial interest in the property, except in cases where the property is chargeable as a gift within three years or a gift with reservation.

7. Property in which the deceased or any other person had an interest ceasing on the death is not chargeable with Estate Duty where the deceased or other person was interested only as holder of an office, as the recipient of charity, or as a corporation sole (F. A. 1894, s. 2 (1) (*b*)). The exemption applies, for example, to ecclesiastical benefices, fellowships of colleges, charitable pensions and almshouses.

Where a trustee is entitled while acting as such to an annual sum by way of remuneration for his services, Estate Duty is not payable on his death on the cesser of such annual sum, as he is considered to be entitled merely as the holder of an office (*A.-G.* v. *Eyres*, [1909] 1 K. B. 723).

8. No Estate Duty is payable in respect of (*a*) property passing on the death by reason only of a *bonâ fide* purchase from the person under whose disposition the property passes, (*b*) the falling into possession of the reversion on a lease for life or lives, or (*c*) the termination of an annuity for life or lives, where the purchase was made or lease or annuity granted for full consideration in money or money's worth, paid to

the vendor or grantor for his own use and benefit—or in the case of a lease, for the use and benefit of any person for whom the grantor was a trustee (F. A. 1894, s. 3 (1)). For example, if *A* sells his house, reserving a life interest for himself, to *B* for its full reversionary value, no duty will be payable on *A's* death (see *A.-G.* v. *Dobree*, [1900] 1 Q. B., at p. 450). But the exemption does not apply to the ordinary purchase of a reversionary interest under an existing settlement, for, even if the vendor happens to be the settlor, the property does not pass, when the reversion falls in, by reason of the purchase.

The exemption has been applied in the cases of (1) policies assigned by the deceased to his son in pursuance of an arrangement for disentailing and mortgaging the family estate, mainly for the benefit of the deceased (*Lethbridge* v. *A.-G.*, [1907] A. C. 19; p. 91, *supra*, where the application of the exemption to policies is separately considered); (2) the deceased's share of goodwill, passing or accruing under a partnership deed to the surviving partners, whose obligations under the deed constituted full consideration (*A.-G.* v. *Boden*, [1912] 1 K. B. 539), and (3) the cesser of an annuity granted to the deceased in pursuance of an arrangement whereby certain life interests in the family estate and powers of charging the same were released (by persons other than the deceased) in favour of the grantor of the annuity (*A.-G.* v. *Sandwich*, [1922] 2 K. B. 500).

But where the transaction is merely a change of security, Estate Duty is chargeable (*A.-G.* v. *Smith-Marriott*, [1899] 2 Q. B. 595; *A.-G.* v. *Hawkins*, [1901] 1 K. B. 285; *Lethbridge* v. *A.-G.*, *supra*; *Inland Revenue* v. *Lyell*, [1918] S. C. 125). For instance, suppose *A* is entitled under a settlement to a jointure charged on one estate which the owner desires to sell free from the

jointure. *A* releases her jointure in consideration of an annuity of equal amount charged on other property. Estate Duty is nevertheless payable on *A's* death on the cesser of her jointure as the effect of the transaction was merely to change the security. The example embodies roughly the facts in *A.-G.* v. *Smith-Marriott* and *Inland Revenue* v. *Lyell.*

Where a payment or transfer by the deceased is accepted in satisfaction of a pre-existing voluntary covenant debt, or in satisfaction of all *legitim*, the value of the rights so discharged is not paid to the deceased "for his own use and benefit" (*H.M. Advocate* v. *Heywood-Lonsdale's Trustees* (1906), 8 Fra. 724).

If partial consideration in money or money's worth is paid to the vendor or grantor for his own use and benefit, the value of such consideration is allowed as a deduction from the value of the property (F. A. 1894, s. 3 (2)). It was held in *Re Bateman*, *A.-G.* v. *Wreford Brown*, [1925] 2 K. B. 429, that "the value of the consideration" means "the value which corresponds to the consideration." The provision must be applied by ascertaining what proportion of the property was the subject of purchase and what proportion represents a gift: the former proportion must then be allowed as a deduction from the value of the whole property. Thus if the property transferred was worth £3,000 at the time of the transfer, and £2,000 was paid in cash, one-third of the property will be taxable. There is no allowance, however, for payments which merely represent the income of the property transferred (*A.-G.* v. *Johnson*, [1903] 1 K. B. 617).

9. Where an interest in expectancy has been *bonâ fide* sold or mortgaged for full consideration in money or money's worth before the F. A. 1894, Estate Duty is not payable by the purchaser or mortgagee. The purchaser or mortgagee is, in fact, only liable to pay the

same duties as would have been payable if that Act had not been passed, and in the case of a mortgage any higher duty payable by the mortgagor ranks as a charge subsequent to that of the mortgagee (F. A. 1894, s. 21 (3)).

So also where the sale or mortgage took place after the principal Act, but before one or other of the undermentioned Acts, Estate Duty is only payable by the purchaser or mortgagee if it would have been payable before the Act or Acts in question, and, if so, at the rates then in force.

Act and Section.	Nature of Amendment.	Applies to Purchase or Mortgage before
F. A. 1900, s. 12 (1).	Aggregation.	9th April, 1900.
F. A. 1907, s. 12.	Rates of Estate Duty.	19th April, 1907.
F. A. 1910, s. 64.	Rates of Estate Duty, etc. (affects also Legacy and Succession Duties).	30th April, 1909.
F. A. 1914, s. 16.	Rates of Estate Duty and liability on deaths of life tenants, etc.	11th May, 1914.
F. A. 1919, s. 29.	Rates of Estate Duty.	30th April, 1919.
F. A. 1925, s. 22.	Rates of Estate Duty.	28th April, 1925.
F. A. 1927, s. 51.	Aggregation.	11th April, 1927.
F. A. 1930, s. 33.	Rates of Estate Duty.	14th April, 1930.

These provisions, which relieve a purchaser or mortgagee from liability to a greater amount of duty than he could possibly have taken into account at the time the

transaction was carried out, are for the benefit of the purchaser or mortgagee only, and only apply where the sale or mortgage is for *full* consideration in money or money's worth as between parties dealing at arm's length. In the case of a mortgage the practical effect appears to be that the property only escapes Estate Duty, or (where the mortgage was effected after the F. A. 1894) any increase of Estate Duty imposed after the transaction was effected, if at the death on which the reversion falls into possession, the equity of redemption has no value (*re Vernon*, [1901] 1 K. B. 297). In other cases of mortgages the Estate Duty is treated as a charge ranking after the mortgage debt. The provisions do not either directly or indirectly affect the liability of persons other than purchasers and mortgagees. For example, *A*, who died in 1890, settled Blackacre by his will on *B* for life with remainder to *C*. *C*, in 1926, sold his reversion for full consideration to *D*. *B* died in 1930. Blackacre would have been an "estate by itself" before the F. A. 1927, but is aggregable under that Act. *D* pays Estate Duty at the rate appropriate to Blackacre as an "estate by itself" (under the scale contained in the F. A. 1925), but Blackacre is nevertheless aggregated with the other aggregable property passing on the death for the purpose of determining the rate of duty *on such other property*. This principle applies to a sale or mortgage of a reversionary *share* of settled property.

Where the reversion is expectant on two lives, both of which fall in after the F. A. 1894, it is evident that, on the death of the first, the interest of the second life tenant does not come within the exemption from Estate Duty as it was not included in the sale or mortgage (*re Reversionary Interest Society, A.-G.* v. *Walker*, "The Times," 14th May, 1896). Apparently, therefore, Estate Duty is then payable, but should be refunded

when the second life tenant dies and the reversion falls into possession.

The purchaser or mortgagee in these cases, if exempt from Estate Duty, is not entitled also to any exemption from Legacy Duty or Succession Duty which the payment of Estate Duty would involve, and the Succession Duty if the other circumstances are appropriate will be chargeable at the higher rates. *See* pp. 248–251.

10. The original scheme of Estate Duty as regards settled property was that one levy after the date of the settlement should cover all the devolutions until the death of a person competent to dispose. The relief was roughly balanced by the imposition of Settlement Estate Duty, as an addition to the first levy of Estate Duty under dispositions taking effect after the F. A. 1894. This policy was reversed by the F. A. 1914, which established the principle of charging Estate Duty on every death, except in the case of the parties to a marriage. Settlement Estate Duty was at the same time abolished, and provision was made for crediting payments of that duty against the next levy of Estate Duty which would not have been chargeable but for the 1914 Act (*see* No. 30, *infra*).

It may be mentioned that (except as stated below) there is no exemption from successive charges of Estate Duty in the case of estates not exceeding £1,000 in value, although these were never liable to Settlement Estate Duty (F. A. 1894, s. 16 (3)).

The exemption now stands as follows:—If Estate Duty has already been paid in respect of any settled property, since the date of the settlement, in connection with the death of one of the parties to a marriage, it is not payable in connection with the death, during the continuance of the settlement, of the other party to such marriage, unless the latter was, at the time of his death or at any time during the continuance of the

settlement, competent to dispose of the property, and, if subsequent limitations under the settlement take effect in respect of the property on his death, was *sui juris* at the time of his death or at any time while so competent to dispose (F. A. 1894, s. 5 (2); F. A. 1898, s. 13; F. A. 1914, s. 14 (*a*)).

The expression "settled property" is given a liberal construction. The exemption is applied, for instance, to cases where the surviving spouse had an annuity *simpliciter* under the will of the other spouse. And it may be taken to extend to any accumulations of the income of the settled property, made under the trusts of the settlement, provided of course that the deceased was never competent to dispose of such income or accumulations.

Among the cases to which the exemption ordinarily applies are the life interests arising under intestacies—estates by the curtesy, dower, statutory life interests under the A. E. A. 1925, and rights of courtesy and terce in Scotland (F. A. 1894, s. 22 (3)).

There must have been an actual payment of Estate Duty on the death of the first spouse. If the property was then exempt from duty for any reason, the present exemption cannot operate. (In "killed in war" cases the original exemption may cover a second death: *see* Nos. 17 and 18, *infra*). On the other hand duty, against which an allowance (*e.g.*, of Settlement Estate Duty) was set off, is regarded as actually paid, even if the allowance entirely cancelled the duty.

Duty paid in Ireland, in Northern Irish cases in connection with a death before the 22nd November, 1921, and in Irish Free State cases in connection with a death before the 1st April, 1923, is equivalent for the purpose of the present exemption to British duty.

The prior payment must have been made after the date of the settlement and in respect of the settled

property. Payment in connection with the death of a testator or intestate satisfies this condition for the purpose of a settlement created by his will or arising under his intestacy, but not for the purpose of a settlement by the beneficiary of property given to the beneficiary absolutely. Even if the settlement in the latter case were made in the testator's or intestate's lifetime (the legacy or share being caught by an after-acquired property clause), the payment in question is not made *in respect of the settled property* (*Lord Advocate* v. *Harvey's Trustees* (1901), 4 Fra. 43).

On the other hand, it was decided that a payment of Estate Duty in the estate of a deceased reversioner, in respect of his expectant interest in the settled property, *was* a payment *in respect of the settled property* (*Inland Revenue Commissioners* v. *Priestly*, [1901] A. C. 208). If the reversioner's debts or incumbrances created by him were deducted from the value of his interest, the payment in his estate would be a payment in respect of a proportion of the settled property corresponding to the net value of the reversionary interest: there would be no payment in respect of the proportion corresponding to the deductions (*Lord Advocate* v. *Mackenzie's Trustees* (1905), 42 S. L. R. 584).

This development of the exemption was limited by the F. A. 1910, s. 55, which enacts that duty shall not be deemed to be paid in respect of settled property if it is paid in respect of an interest in expectancy on the death of a person other than the settlor. But proviso (*a*) in the F. A. 1914, s. 14, does not mention s. 55: it provides simply that, in the case of parties to a marriage, nothing in s. 14 shall affect the relief given by the F. A. 1894. It follows that, if s. 14 has to be invoked in order to establish a *primâ facie* liability to duty on the death of the second spouse, s. 55 does not apply; but if there is

a *primâ facie* liability apart from s. 14, then s. 55 does apply. For example—(1) *A*, dying in 1900, gave a legacy on trust for his daughter *B* for life, then for her husband *C* for life, then as *B* should appoint. Estate Duty was paid on *A's* death. *B* died in 1913: Estate Duty was not payable in respect of the passing of the legacy to *C*, because of the prior payment on *A's* death, but was paid in *B's* estate on her reversion. On *C's* death in 1930 no Estate Duty is chargeable, not because of the payment on *A's* death, but because of the payment on *B's* death, although *B* was not the settlor. Apart from the F. A. 1914, the payment on *A's* death would have sufficed, therefore the F. A. 1910, s. 55, does not apply. (2) *D* settled property on *E* for life with remainder to her husband *F*. *D* lived more than three years after the gift and no duty was paid on his death. *F* died in *E's* lifetime and Estate Duty was paid in his estate on his reversion. Estate Duty is nevertheless payable on the death of *E*. The claim arises independently of s. 14, and s. 55 applies. (3) *G* settled property on his own wife *H* for life, with remainder to their children. A child predeceased them after attaining a vested interest and *G* became entitled to such child's share. *G* then died and Estate Duty was paid in his estate on his reversion. On *H's* subsequent death the share in question is exempt, the condition imposed by s. 55 being satisfied.

Except in cases where the prior payment was made in respect of an interest in expectancy, it makes no difference whether the property was settled by one of the spouses or by a third party.

The expression "competent to dispose" has been discussed in Chapter I (pp. 8–13). It is sufficient to disqualify a case for exemption that the deceased was competent to dispose of a reversionary interest. Thus, if property is settled on *A* for life, with remainder to

her husband *B* absolutely, and *B* settles his reversion on trust for himself for life, with remainder over, and Estate Duty is paid on *A's* death, there will be no exemption on the subsequent death of *B*, because *B* was competent to dispose of the property (in expectancy) at a time during the continuance of the settlement, viz., the settlement under which he derived his benefit (*cf. A.-G.* v. *Hay*, [1899] 2 Q. B. 245).

The exemption is not affected by the fact that the parties to the marriage may have been divorced, or by any re-marriage. If the deceased was twice married, first to *X* and then to *Y*, and was life tenant of Blackacre which bore duty on *X's* death and of Whiteacre which bore duty on *Y's* death, both properties are exempt.

11. The exemption of settled property, which bore Probate Duty or Account Duty on the death of the deceased's spouse, closely resembles the last-mentioned exemption where Estate Duty was paid on the first death, and has a similar history. Until the F. A. 1914 the exemption was given whether the prior payment was in connection with the death of a spouse or not.

The position is now as follows:—In the case of personal property settled by a will or disposition made by a person dying before the F. A. 1894, if Probate Duty or Account Duty has been paid or is payable in respect of such property in connection with the death of one of the parties to a marriage, Estate Duty is not payable in respect of such property in connection with the death of the other party to the marriage, unless the latter was at the time of his death or at any time since the will or disposition took effect, competent to dispose of the property (F. A. 1894, s. 21 (1); F. A. 1914, s. 14 (*a*)).

The term Probate Duty is used to include not only the Stamp Duty on Probates issued in England and

Ireland, but also the similar Administration Stamp Duty on Letters of Administration and the Scottish Inventory Duty. Probate Duty in the wider sense was (and is) payable in connection with deaths before the F. A. 1894 in respect of all personal property in the United Kingdom devolving under the will or intestacy of the deceased. It was not chargeable on real property. Account Stamp Duty was imposed by the Customs and Inland Revenue Acts of 1881 and 1889, and was leviable, again in connection with deaths before the F. A. 1894 and on personal property only, in the cases of *donationes mortis causa,* gifts within three months of death, gifts and settlements with reservation, joint property, and policies effected and kept up by the deceased for the benefit of another person.

It will be observed that the duty on the first death may be either paid or *payable.*

Notwithstanding the express reference to personal property, the exemption has been held to cover real property which a testator directed to be purchased out of his *residuary personalty* (which bore Probate Duty) and to be held upon trust for the deceased for life (*A.-G.* v. *Londesborough,* [1905] 1 K. B. 98).

The exemption does not apply where the settlor died after the F. A. 1894. In practice the *other* conditions would seldom be satisfied in such a case.

If the deceased was competent to dispose, within the statutory meaning, it makes no difference whether he was *sui juris.*

In other respects the conditions are the same *mutatis mutandis* as those affecting exemption No. 10.—Probate Duty or Account Duty paid or payable in Ireland satisfies the requirement. If an absolute legacy is caught by an after-acquired property clause in a settlement by the legatee, the Probate Duty on the testator's death is not paid *in respect of the settled property,* so as to confer

any exemption on the subsequent death of a life tenant under the settlement (*re Torrington*, [1913] 2 Ch. 623; *cf. Lord Advocate* v. *Harvey's Trustees*, p. 245, *supra*). Probate Duty on a reversion, however, was held to have been paid in respect of the settled property (*A.-G.* v. *Dodington*, [1897] 2 Q. B. 373; *cf. Inland Revenue Commissioners* v. *Priestley*, p. 245, *supra*). On this point the effect of the F. A. 1910, s. 55, and the F. A. 1914, s. 14 (*a*), is precisely the same as where Estate Duty was paid on the reversion. The present exemption is similarly unaffected by divorce or re-marriage.

Owing to the limited scope of Probate Duty and Account Duty, funds settled before the F. A. 1894 frequently consisted partly of property which bore one of these duties and partly of property which did not. In such cases the exemption applies *pro tanto*. If the different kinds of property have been blended, an apportionment is necessary. For example, *A* dying in 1890 gave his whole estate, consisting of personal property worth £20,000 and real property worth £10,000 in this country, and moveable property abroad worth £2,000, to trustees on trust to sell and to pay out of the proceeds an annuity of £500 to his wife. The first item alone bore Probate Duty on *A's* death. Estate Duty is therefore payable in respect of the cesser of her annuity so far as attributable to the real estate and foreign assets, viz., on $\frac{12000}{32000}$ or three-eighths of the fund or "slice" of a fund then producing the annuity (F. A. 1894, s. 7 (7); *Berry* v. *Gaukroger*, [1903] 2 Ch. 116). Regard must be had to the due course of administration. Thus, if in the last example debts amounting to £8,000 had been deducted for the purpose of Probate Duty from the £20,000, the taxable proportion of the capital which produced the annuity would be $\frac{12000}{24000}$ or one-half.

12. Where the deceased was entitled by law to the rents and profits of real or leasehold property of his wife, and dies in her lifetime, the property is not deemed to pass by reason of her then becoming entitled thereto by virtue of her former interest (F. A. 1896, s. 15 (4)). This applies only in cases of marriage before the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881.

13. Where a husband or wife is entitled either solely or jointly with the other to the income of any property settled by the other, under a disposition taking effect before the F. A. 1894, and on his or her death the settlor becomes entitled to the income, Estate Duty is not to be paid until the death of such settlor (F. A. 1894, s. 21 (5)).

Suppose *A* by deed dated 1890 settled property on his wife for life, and on her death on himself for life, with remainder to their children. The wife dies after the F. A. 1894, leaving *A* surviving. Estate Duty is not payable on her death, though it will be payable on the subsequent death of *A*. There are three conditions for the exemption :—

(1) The settlement must have taken effect before the F. A. 1894, and

(2) the settlor must survive the other spouse, and

(3) the settlor must become entitled to the *income* of the property on the death. If the settlor then becomes entitled to the *corpus,* the exemption does not apply (*A.-G.* v. *Strange,* [1898] 2 Q. B. 39).

The effect of the provision is to postpone payment of duty until the death of the spouse who settled the property.

14. Where by a disposition of property the disponer confers on any other person an interest for the life of such person or determinable on his death, and (1) such

person enters into and retains possession of the interest to the entire exclusion of the disponer or of any benefit to him by contract or otherwise, and (2) the only benefit which the disponer retains in the property is subject to such life or determinable interest, and (3) no other interest is created by the disposition, and (4) the person taking such life or determinable interest was not at any time prior to the disposition competent to dispose of the property, and (5) the disponer survives such person, then no Estate Duty is payable on the death of such person by reason only of the reverter of the property to the disponer; and where any such interest is conferred on two or more persons (whether severally, jointly, or in succession) the exemption is to apply in like manner (F. A. 1896, s. 15 (1), (2) and (3)).

For example, *A* settles property on trust for *B* for life, then for *C* for life, then for himself absolutely. Neither *B* nor *C* ever owned or had a general power over the property. Provided that *B*, and afterwards *C* (if he survives *B*), enter into possession of their respective life interests so that *A* is excluded from all benefit, it is clear that no duty is payable on the death of the survivor of *B* and *C* in *A's* lifetime. In favour of *A* the exemption covers both deaths, but it does not apply in favour of *C*, and moreover it cannot be known, if *B* dies leaving *C* and *A* surviving, whether the exemption will apply at all (*i.e.*, whether *A* will survive *C*). It seems therefore that duty is payable on *B's* death, but repayable on the death of *C* if *A* is then living (*cf. re Reversionary Interest Society, A.-G.* v. *Walker*, "The Times," 14th May, 1896). The most usual case in practice is a simple life interest given to a poor relation or old servant.

The exemption does not apply—

(1) Where the interest is granted in consideration of the release of another similar interest, for

that is a benefit to the disponer by contract (*Inland Revenue* v. *Lyell,* [1918] S. C. 125);

(2) Where the property is settled on trust to pay an annuity thereout to the disponer, and subject thereto for the other person for life, with remainder to the disponer, for there it cannot be said that the only benefit retained by the disponer is subject to the life interest (*A.-G.* v. *Penrhyn* (1900), 83 L. T. 103; *A.-G.* v. *Glossop,* [1907] 1 K. B. 163);

(3) Where *A* settles the property on *B* for life with remainder to *B's* children absolutely, and in default for *A* absolutely, and *B* dies without children, for the contingent interests of *B's* possible children were "other interests" created by the disposition (*A.-G.* v. *Penrhyn; A.-G.* v. *Glossop, supra*);

(4) Where *B*, in order to evade duty, gives the property to *A*, who then settles it on *B* for life with remainder to himself, for there *B* was competent to dispose before the disposition in question (viz., the settlement); or

(5) Where the disponer has died and the property reverts to the persons deriving title under him.

Where a person forfeits his interest under a settlement and the property reverts to him on a subsequent death, the forfeiture is not a "disposition" for the purpose of this exemption (*Inland Revenue* v. *Montgomery's Trustees* (1914), 51 S. L. R. 377).

15. In the case of settled property, where the interest of any person fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property is not to be deemed to pass on his

death (F. A. 1894, s. 5 (3)). Two conditions should be noted :—

(1) The property must be settled, *i.e.*, limited to or in trust for persons by way of succession, and

(2) Limitations subsequent to the deceased's interest must continue to subsist.

For example, *A* settled property on her marriage on trust for herself during the joint lives of herself and her husband, then for the survivor for life, then for the issue of the marriage, and in default of issue for herself absolutely if she should survive her husband. The husband died in *A's* lifetime and there were no issue. It was held that the ultimate trust for *A* was a limitation under the settlement which continued to subsist at the husband's death and that the exemption applied on that occasion (*A.-G.* v. *Wood*, [1897] 2 Q. B. 102). Again, where a husband's fund and wife's fund were settled on trust (as to the aggregate fund) during the joint lives to pay an annuity to the wife and the surplus income to the husband, on the death of either to pay the whole income to the survivor, on the death of the survivor for the issue of the marriage, and in default (as to the wife's fund) for her absolutely if she should survive the husband, it was held that the exemption applied on the death of the husband in the wife's lifetime to so much of the wife's fund as formed part of the *corpus* producing her annuity (*A.-G.* v. *Glossop,* [1907] 1 K. B. 163).

The interest in question must *fail* or *determine*. The provision does not affect, *e.g.,* a *vested* interest in expectancy, where the reversioner, being entitled absolutely, dies before his interest falls into possession. But if the reversioner has settled his reversion on himself for life, with remainder to other persons, and dies before the reversion falls into possession, the exemption applies. In ascertaining whether an interest is "in possession,"

regard must be had to the substantial results. Thus the exemption was given in an Irish case where an infant was entitled to real property in fee simple in possession under a disposition containing a limitation over on his death under twenty-one without issue (which happened) and a further provision that during any minority the trustees should pay out of the rents such sum as they might think proper for the infant's maintenance and should accumulate the surplus income on trust for the infant if he should attain twenty-one, with remainders over in default (*A.-G. (I.)* v. *Power,* [1906] 2 I. R. 272). In fact, it may be taken generally that a right to maintenance out of any property, or a possibility of immediate advancement, under maintenance and advancement clauses of the normal kind or under the corresponding statutory powers, is not in itself an interest in possession for the present purpose. No Estate Duty is payable, therefore, on the death of an infant in respect of his contingent interest in the estate of an intestate under the statutory trusts created by the A. E. A. 1925, s. 47. But in the absence of a trust or power to accumulate, where the whole income must necessarily be paid out, there is *primâ facie* an actual passing of the property on the death. Where there is an express direction to expend a specified yearly sum out of the income of property on the maintenance of an infant, the infant has an interest in possession in the "slice" of the property required to produce the yearly sum (*A.-G.* v. *Coole,* [1921] 3 K. B. 607). In another type of case, where a testator gave a legacy on trust for *A* for life, with remainder over, and *A* died within the "executor's year," before the legacy was appropriated, so that neither he nor his representatives received any income from it, it was again held that *A's* interest had failed before it became an interest in possession (*re Harrison, Johnstone* v. *Blackburn, &c., Infirmary,*

[1918] 2 Ch. 374). The last case may be compared with one where an annuitant died two days after her testator: the annuitant's representatives were entitled to an apportionment of the annuity, and Estate Duty was held to be payable on the annuitant's death (*A.-G.* v. *Watson,* [1917] 2 K. B. 427).

The exemption extends in the following cases to the deaths of reversioners who are competent to dispose of their reversionary interests, viz., a tenant in tail in remainder who dies without disentailing, a joint tenant who dies without severing the reversionary joint tenancy, and the donee of a general power of appointment who dies without exercising such power while a prior life interest is still outstanding.

16. Where property is settled by a person on himself for life and after his death on any other person or persons, with an ultimate reversion of an absolute interest or absolute power of disposition to the settlor, the property is not deemed to pass to the settlor on the death of any such other person, by reason only that the settlor, being then in possession of the property as tenant for life, becomes in consequence of such death entitled to the immediate reversion or acquires an absolute power to dispose of the whole property (F. A. 1896, s. 14). *Ex hypothesi* the interest of the deceased is an interest in settled property which fails before it becomes an interest in possession; and in view of the decision in *A.-G.* v. *Wood* (*supra,* p. 253), that an absolute reversion may be a limitation which continues to subsist, within the meaning of the F. A. 1894, s. 5 (3), it seems doubtful whether s. 14 of the 1896 Act conferred any additional exemption. It may be mentioned that, although *A.-G.* v. *Wood* was decided after the 1896 Act, the death took place before that Act, which accordingly did not apply; the Court, in refusing to regard s. 14 as governing the construction of s. 5 (3) of the

principal Act, suggested that s. 14 might be merely declaratory.

17. The property of a common seaman, marine, or soldier, including an airman (Air Force (Constitution) Act, 1917, and enactments applied thereunder), who may be slain or die in the service of His Majesty, whether on active service or not, is not liable to Estate Duty (F. A. 1894, s. 8 (1)). And no other duties, from which the estate would have been exempted if Estate Duty had actually been paid, are claimed. Thus, if the estate does not exceed £1,000, Legacy Duty and Succession Duty are not chargeable; nor would they be chargeable if the estate exceeded £1,000, but did not exceed £15,000, and the beneficiaries were lineal issue or lineal ancestors of the deceased. The exemption does not apply to settled property in which the deceased had a life interest only, but it is treated as covering property over which he exercised a general power of appointment, gifts *inter vivos,* and policies, etc., provided by the deceased. Moreover, the exemption extends to all devolutions under the deceased's disposition of his property, *e.g.,* it applies on the death of a life tenant under his will as well as on his own death. The term "common seamen, marines, soldiers or airmen" includes seamen not above the rank of chief petty officer, marines not above the rank of sergeant and soldiers or airmen not above the rank of corporal or lance-sergeant.

18. The above exemption was extended by the F. A. 1900, s. 14, which provides that where any person dies from wounds inflicted, accident occurring, or disease contracted within twelve months before death while on active service against an enemy, whether on sea or land or by air, and such person was at the time either subject to the Naval Discipline Acts, or subject to military law, whether as an officer, non-commissioned

officer or soldier, the Treasury may, if it thinks fit, on the recommendation of the Secretary of State or of the Admiralty, remit, up to an amount not exceeding £150 in any one case, the whole or any part of the death duties leviable in respect of property passing to the widow or lineal descendants, if the total value for Estate Duty of the property so passing does not exceed £5,000.

It will be noted that this provision only applies where the death occurred on, or in consequence of, active service against an enemy, and then only if the estate passes to the widow or lineal issue of the deceased and does not exceed £5,000. It applies to all death duties and not merely to Estate Duty, but the amount remitted must not exceed £150 in any one case.

The above provision was further extended by the Death Duties (Killed in War) Act, 1914, in the case of persons killed in the Great War. This extension only related to the war in question (which officially terminated on the 31st August, 1921, except as to Turkey, where the date was 6th August, 1924), and applied to all persons in H.M. Naval and Military Forces, whether serving in this country or abroad, or with the Allied Forces; combatants of the latter Forces (as to property in the United Kingdom), where reciprocal concessions were granted by the country to which they belonged; H.M. Army nurses and also members of the Voluntary Aid Detachment and of the British Red Cross Society when under military law; also to the master or members of the crew of a ship or fishing boat dying from causes arising out of the operations of the war (F. A. 1917, s. 29). The Air Force was brought within the scope of the exemptions by the Air Force (Constitution) Act, 1917. The period and conditions in which death must have occurred were extended by s. 31 of the F. A. 1919, and this extension was made retrospective so that the

remission may be applied where the deceased died from wounds inflicted, accident occurring or disease contracted, within three years (originally the period was twelve months) before death while on active service against an enemy, including wounds inflicted, accident occurring or disease contracted in the course of operations arising directly out of the war, but after its termination.

The following points may be noted :—

(*a*) The remission extended to lineal ancestors as well as to the widow and lineal descendants (Death Duties (Killed in War) Act, 1914, s. 1 (1)) and also to brothers and sisters and the descendants of brothers and sisters. (The extension, with retrospective effect, to brothers and sisters and their descendants was made by F. A. 1918, s. 44.)

(*b*) It extended to the whole of the duties leviable on property passing under any title to those persons where the value for Estate Duty of the property so passing did not exceed £5,000.

(*c*) Where the value for Estate Duty of the property passing to such persons exceeded £5,000, the remission extended to the whole of the death duties on the first £5,000, and the duties on the remainder of the property were discounted (according to the Tables of Mortality of Government Life Annuitants, 1912) for the period the deceased would have lived if he had enjoyed the normal expectation of life (Death Duties (Killed in War) Act, 1914, s. 1 (1) (*b*)).

(*d*) The benefits of the relief given in respect of the first £5,000 were rateably apportioned among the persons who would otherwise bear the duties remitted according to the amounts they would

so bear and without regard to their respective rights of priority (*ibid.*, s. 1 (2)). If property passed under several titles to beneficiaries entitled to remission, the first £5,000 was rateably apportioned between the different properties.

(*e*) Where the deceased settled his estate by his will, the relief is considered to apply not only to the immediate gift on his own death, but also to the reversionary interests expectant on the death of a life tenant. Thus if the testator bequeathed his estate, being under £5,000 in net value, to his mother for life with remainder to his brothers, it would be freed not only from Estate Duty on the death of the testator, but also from Estate Duty and Legacy Duty on the death of the mother. If the estate in such a case exceeded £5,000, the first £5,000 would be similarly freed on the mother's death and the excess would be discounted on the basis of the testator's expectation of life at the time of his death.

(*f*) Where the relief *in respect of Estate Duty* obtained under this section was less than that which might have been obtained under s. 15 of the F. A. 1914, which provides for discount in the case of land or a business where a second death occurs within five years (pp. 276–280), the relief was to be under the last-mentioned section only. In other cases s. 15 was not to apply to any Estate Duty to which the special relief on deaths occurring during the war applied (Death Duties (Killed in War) Act, 1914, s. 1 (3)). It should be noted that this provision only related to Estate Duty, so that in an appropriate case relief from Estate Duty might have been

claimed under s. 15 of the F. A 1914, and relief from any other duties under the section now being considered.

(*g*) The first £5,000 on which all duties were remitted was not subject to aggregation.

(*h*) Where the estate was entitled to any allowance of Colonial duty under s. 20, F. A. 1894, of Legacy Duty under s. 21, F. A. 1896, or of Settlement Estate Duty under s. 14 (*b*), F. A. 1914, the Estate Duty had first to be discounted under the Killed in War Act, and the allowance of any of the above duties then made against the Estate Duty as so discounted.

In addition to the above, provision was also made for remission of all duties in respect of any property passing more than once owing to deaths caused by the war (Death Duties (Killed in War) Act, 1914, s. 2). The intention was to provide that where an estate passed more than once owing to the accident of war, duty should only be charged in connection with the first death, and that irrespective of the person to whom the estate passed. This provision originally only applied to Estate Duty, but was extended with retrospective effect to Succession and Legacy Duty as well (F. (No. 2) A. 1915, s. 46). The property on which duty was remitted on the second death was not liable to aggregation with any other property then passing (Death Duties (Killed in War) Act, 1914, s. 2 (1)). The relationship of the person to whom it passed on the second death was immaterial for the purpose of this remission.

It may be added that by F. A. 1921, s. 43, the provisions relating to persons killed in the Great War were extended to the members of any of His Majesty's Forces, judges, magistrates, members of any police force in Ireland (including special constables), and members of His Majesty's Civil Service, serving in Ireland, who die

after the 31st December, 1918, from causes arising directly out of "the present state of disorder in Ireland."

Further, by F. A. 1924, s. 38, the temporary provisions relating to persons killed in the Great War, but not including s. 2 of the Death Duties (Killed in War) Act, 1914, were extended to members of His Majesty's Forces who are subject either to the Naval Discipline Act or to military law, whether as officers, non-commissioned officers, or soldiers under Part V of the Army Act, or to the Air Force Act, and who die after 31st August, 1921, from wounds inflicted, accidents occurring, or disease contracted while on active service against an enemy, or on service which is of a warlike nature, or which, in the opinion of the Treasury, otherwise involves the same risks as active service. This extension is general in character and not limited to any particular war or period.

No duties are claimed in respect of medals, orders and other honourable decorations, uniforms or equipment of members of H.M. Forces killed in war.

19. Pensions or annuities payable by the Government of India to the widow or child of any deceased officer of such Government are exempted from Estate Duty even though the deceased contributed during his lifetime to any fund out of which the pension or annuity is paid (F. A. 1894, s. 15 (3)). This exemption is treated as applying also to pensions granted by a provincial government in India, even where the contribution of the deceased is made voluntarily.

20. It is provided by s. 16 of the Regimental Debts Act, 1893 (which regulates the collection and disposal of the effects of persons dying while subject to military law), that if the "surplus" (*i.e.*, the value of the effects less preferential charges) or the "residue" (*i.e.*, the "surplus" together with arrears of pay and allowances)

does not exceed £100, no duty shall be payable in respect thereof, and a grant of representation may be dispensed with. The exemption is considered to be incorporated by s. 8 (1) of the F. A. 1894. It applies without reference to the question whether the deceased had other free estate: if an officer's "residue" amounts to £80 and his other assets (not administered by the military authorities) to £10,000, Estate Duty is payable on the £10,000 only. The case differs from the general run of those in which provision is made for paying small sums without a grant. In the cases of Saving Banks, Friendly Societies, etc., there is no *exemption from duty* unless the whole net estate, including the sum in question, does not exceed £100.

21. Section 15 of the Navy and Marines (Property of Deceased) Act, 1865, confers an exemption similar to the last, where the "residue" does not exceed £100.

22. No death duty is chargeable in respect of purely voluntary payments from outside sources to the representatives or relatives of a deceased person. Strictly this is not an *exemption*: the position is that the amounts are not within the taxing provisions. Among the payments which escape liability on this ground are the compassionate allowances and pensions granted by the British Government to the widows and children of members of His Majesty's Military, Naval and Air Forces, and the gratuities awarded to the representatives of deceased civil servants under the Superannuation Acts, 1909 and 1914. But the gratuity payable under Article 497 of the Royal Warrant for pay and promotion to the representatives of a deceased officer forms part of his estate, and is taxable accordingly. In the case of teachers, gratuities awarded under the Teachers (Superannuation) Act, 1918, were exempt, but those payable under the Teachers (Superannuation) Act, 1925, are enforceable, and therefore liable to duty

(*A.-G.* v. *Quixley* (1929), 98 L. J. K. B. 652). A similar liability attaches to gratuities under the Education (Scotland) (Superannuation) Act, 1925. No duty is claimed in respect of pensions, allowances, etc., paid direct to the widows and dependents of deceased police officers, under the Police Pensions Act, 1921; but payments to the legal personal representatives, as such, of the deceased officer form part of his estate and are liable to duty accordingly. Newspaper insurances and benefits from Provident Funds are usually enforceable, and therefore within the scope of taxation.

23. A single annuity not exceeding £25, purchased or provided by the deceased either by himself alone or in concert or arrangement with any other person for the life of himself and of some other person and the survivor of them, or to arise on his own death in favour of some other person, is exempt from Estate Duty, and if there is more than one such annuity the one first granted is entitled to the exemption (F. A. 1894, s. 15 (1)). For example, *A* purchases for *B* an annuity of £40 to commence on *A's* death and another annuity of £15 for the joint lives of himself and *B* and the life of the survivor, and subsequently purchases a third annuity of £20 on the same terms as either of the previous annuities. On *A's* death in *B's* lifetime Estate Duty is payable on the annuities of £40 and £20, but not on that of £15, which comes within the exemption. The exemption could not be claimed in respect of the £20 annuity instead of the £15 annuity. If the deceased purchased annuities for two or more different persons, the exemption is available for one annuity payable to *each* such person. The exemption does not apply to annuities given by the will of the deceased.

24. The Treasury is authorised to remit the Estate Duty (or any other duty) in respect of such pictures, prints, books, manuscripts, works of art or scientific

collections as appear to the Treasury to be of national, scientific or historic interest, and to be given or bequeathed for national purposes or to any university or to any county council or municipal corporation; and property in respect of which the duty is so remitted is not to be aggregated with any other property for fixing the rate of Estate Duty (F. A. 1894, s. 15 (2)). Application should be made to the Estate Duty Office, accompanied by an inventory and valuation of the articles and a statement giving particulars of the corporation, etc., to which they are given and of the grounds on which it is considered that they come within the exemption. A letter of acceptance of the gift should also be furnished. The Treasury is not bound to remit, and there is no appeal from the decision. This power of remission is not affected by the F. A. 1930 (*see* s. 40 (4) of that Act).

25. Pictures, prints, books, manuscripts, works of art, scientific collections and other things not yielding income, which appear to the Treasury to be of national, scientific, historic or artistic interest, are exempt from all death duties while enjoyed in kind, and their value is not taken into account in estimating the value of the estate or the rate of Estate Duty. This exemption applies whether the articles are settled or not. On a sale taking place, duties become chargeable in respect of the last death on which the articles passed. The person, by whom or for whose benefit they are sold, is accountable, and is required to deliver an account within one month after any sale.

Where the last death occurred on or after the 1st August, 1930, Estate Duty is payable on the actual proceeds of sale, at the rate appropriate to the rest of the estate passing on the death, with which the articles would have been aggregated but for the exemption (F. A. 1930, s. 40). If no such other property passed

on the last death, the articles escape Estate Duty. For example, if the articles were settled, and the rest of the settled property (if any) was covered by exemption No. 10, and the unsettled property (not exceeding £1,000) was an estate by itself, there is no available *rate* at which the proceeds of the articles can be taxed.

Where the last death occurred before the 1st August, 1930, Estate Duty is payable on the value of the articles sold, as at the date of the death, and the rate is fixed according to the value of the *whole exempted collection* at that date as an "estate by itself." For instance, if the value of the collection at the death in 1929 was £12,000, including a picture worth £3,000, and that picture is subsequently sold, Estate Duty is chargeable on £3,000 at 5 per cent. (the rate for an estate exceeding £10,000 but not exceeding £12,500). The actual price obtained for the picture is immaterial, except so far as it may afford an indication of the value at the time of the preceding death. (F. A. 1896, s. 20; F. A. 1910, s. 63.)

A sale to another member of the family is none the less a sale: and if a person entitled to a share of exempted articles sells his share, whether to another person similarly entitled or otherwise, the share so sold is taxable.

Applications for exemption should be made to the Estate Duty Office and should contain (1) an inventory of the articles, (2) an estimate of their separate values, (3) a statement of the grounds on which it is considered they are entitled to exemption, and (4) an intimation as to where they may be seen. In cases falling under the Acts of 1896 and 1910, *i.e.*, where the death occurred before the 1st August, 1930, a valuation, and not a mere estimate, is required. Broadly speaking, the exemption is intended to apply not to collections as a whole but to particular works of art which are of such

national, scientific, historic or artistic interest that they would be purchased or accepted as a gift or bequest by one of the national collections.

26. Articles to which the last exemption has applied while unsold are finally exempted from all death duties if sold to the National Gallery, British Museum or some other similar national institution, any university, any county council, any municipal corporation in Great Britain, or the National Art Collections Fund (F. A. 1930, s. 40 (2), replacing F. A. 1921, s. 44). But, in cases where the last death occurred before the 1st August, 1930, the articles sold to any such body will remain part of the "estate by itself," for the purpose of fixing the rate of duty to be paid on any *other* articles from the collection which may become taxable with reference to that death.

27. An advowson, *i.e.*, the perpetual right to present an incumbent to a living of the Church of England on any vacancy occurring, or a right to the next presentation, is not liable to Estate Duty, even when sold (F. A. 1894, s. 15 (4); *A.-G.* v. *Peek,* [1913] 2 K. B. 487). But the proceeds of any sale are chargeable with Succession Duty (*see* p. 516), and will also be liable to Estate Duty if they pass under a settlement on a subsequent death. This will be so even where the deceased life tenant was the spouse of the testator or settlor, for the exemption usually applicable to such cases (No. 10, *supra*) requires a payment of Estate Duty on the prior death.

28. Timber is not liable to duty unless and until sold (F. A. 1910, s. 61 (5), as amended by F. A. 1912, s. 9), and its value as at the date of death is not taken into account for the purpose of ascertaining the rate of Estate Duty. On sales taking place, Estate Duty is payable on the net sums from time to time realised, with interest from the date of sale. If the timber is

sold unfelled, or the land is sold with the timber, duty is payable on the value at the date of death, subject to an allowance in respect of Estate Duty paid on periodical sales. *See also* pp. 145–148.

Allowances Against Estate Duty.

29. Where settled property passes under a disposition which took effect before the F. A. 1894, and Legacy Duty or Succession Duty at 1 per cent., or either of the additional Succession Duties imposed by s. 21 of the Customs and Inland Revenue Act, 1888, or either of the Temporary Estate Duties imposed by ss. 5 and 6 of the Customs and Inland Revenue Act, 1889, has been paid, under the same will or disposition, before the commencement of the F. A. 1894, on the *corpus* of that property, an allowance is made against the Estate Duty in respect of such prior duty (F. A. 1896, s. 21). This allowance may be either the sum actually paid, or duty at the same rate on the sum liable to Estate Duty (F. A. 1907, s. 15), and on delivering the account the parties should elect which method they wish adopted. Thus, suppose real estate were given by the will of *A*, who died in 1890, upon trust to sell, and the proceeds to his son for life and on his death to his children equally. On *A's* death Succession Duty at 1½ per cent. would have been paid on the *corpus* of the property or the proceeds of sale thereof, as it devolved as personal estate to persons all liable to the same rate of duty. On the son's death in 1930, Estate Duty would be payable; but the Succession Duty would be allowed in diminution of the Estate Duty. Thus, if the value were £2,000, and the rate of Estate Duty 3 per cent.—

	£	s.	d.
Estate Duty would amount to ...	60	0	0
Less Succession Duty at 1½ per cent. on £2,000	30	0	0
Amount payable	£30	0	0

In the above instance it has been assumed that the value on *A's* death was the same as on the son's death. But suppose the property had depreciated and was worth only £1,500 at the latter date. The proper course would then be for the parties to elect, not to have an allowance of 1½ per cent. on £1,500, but to claim to be allowed the amount actually paid. Thus—

	£	s.	d.
Estate Duty at 3 per cent. on £1,500	45	0	0
Succession Duty actually paid: viz., 1½ per cent. on £2,000	30	0	0
Amount payable	£15	0	0

If there was a single payment of any duty which falls to be allowed, in respect of property which becomes liable to Estate Duty piecemeal, the allowance is apportioned. But the allowance cannot be given more than once in respect of the same property or share.

If the allowance is not expressly claimed, the Estate Duty Office makes it automatically when the account is assessed, applying the percentage method.

Legacy Duty or Succession Duty paid by way of *life interest* cannot be allowed against Estate Duty (*re Lady Mary Foley*, "The Times," 18th May, 1898). It should be noted also that the allowance can be given only in respect of duties paid or payable before the F. A. 1894.

30. The relief from Estate Duty originally conferred on settled property where Estate Duty had once been paid was counterbalanced by a further Estate Duty called Settlement Estate Duty, which was chargeable on all property settled by dispositions taking effect after the F. A. 1894, except where the only life interest was that of the husband or wife of the deceased (F. A. 1894, s. 5 (1)). The duty was originally charged at the fixed rate of 1 per cent., but was increased by the F. A. 1910

to 2 per cent. (F. A. 1910, s. 54). As the effect of the F. A. 1914 was to impose Estate Duty on each passing of settled property, Settlement Estate Duty was abolished as to deaths after the 11th May, 1914 (F. A. 1914, s. 14). It will be observed that the increased liability to Estate Duty applied in the case of deaths after the 15th August, 1914, and if, therefore, settled property passed on a death between those dates and bore Estate Duty, and the life tenant also died before the 15th August, 1914, Settlement Estate Duty would not be chargeable, nor would Estate Duty on the death of the life tenant.

As regards existing settlements under which Settlement Estate Duty has been paid, it is provided by the F. A. 1914, s. 14 (*b*), that on the first occasion on which Estate Duty becomes payable in respect of any property, which would not have been payable but for that section, the amount of any Settlement Estate Duty which has been paid in respect of such property shall be allowed against the amount of such Estate Duty, and if it exceeds that amount the excess shall be repaid to the estate. In addition, a sum equal to simple interest at 3 per cent. on the said amount of Settlement Estate Duty, from the 15th August, 1914, up to the date of the "occasion," is to be repaid. For example, *A*, who died in 1898, by will settled property on his daughter *B* for life, and then on her children. Settlement Estate Duty at 1 per cent. was paid on *A's* death. *B* dies after the 15th August, 1914, and Estate Duty is again payable, but against it the Settlement Estate Duty is allowed as a deduction. Cases of repayment of an excess of Settlement Estate Duty occur where the value for Estate Duty does not exceed £500, and Settlement Estate Duty was paid at 2 per cent. (under the F. A. 1910), and also where a small settled fund or property has considerably declined in value. If there was a single payment of

Settlement Estate Duty on a fund which passes after the F. A. 1914 piecemeal, the allowance is apportioned. But if a share, which has been the subject of the allowance, accrues to other settled shares, there will *pro tanto* be no allowance on the subsequent deaths. Thus if the trusts of a fund are to pay an annuity to *A* for life, and subject thereto to pay the income equally to *B* and *C* during their joint lives and on the death of either to the survivor for life, with remainder over, and the deaths occur in the order mentioned, then on *A's* death the allowance will be proportionate to the "slice" of capital producing the annuity, on *B's* death the allowance will be half the original payment of Settlement Estate Duty less half the amount allowed on *A's* death, and on *C's* death the balance will be allowed. Interest will be repaid on each occasion on the respective amounts of duty allowed.

It should be noted that the Settlement Estate Duty is only allowable against Estate Duty which is payable in consequence of the F. A. 1914. If Estate Duty would have been payable in any case, even if that Act had not been passed, no allowance can be claimed. For example, suppose *A*, who died in 1900, by will settled property on *B* for life, then on *C* for life, and on *C's* death as she should by will appoint. *B* died before the F. A. 1914, and *C* died after that Act. On *C's* death Estate Duty is again payable, but this duty would have been payable even if the F. A. 1914 had not been passed, because she was competent to dispose. No allowance can therefore be made in respect of the Settlement Estate Duty paid on *A's* death. And there can be no allowance or repayment if no "occasion" occurs on which further Estate Duty is actually payable. This would be the position, for instance, where *D* by will settled property on trust for his mother *E* for life, then for his wife *F* for life, then for his children, and

E died before the F. A. 1914, for on the occasion of *F's* death the property would be exempt from Estate Duty. The same result follows if the property is taken out of settlement and divided up so that it does not again pass under the settlement (*Lord Advocate* v. *Moray* (1919), 2 S. L. T. 258).

The allowance is not confined to Settlement Estate Duty paid under the same settlement as the Estate Duty against which it is allowed. A payment in respect of a reversionary interest is a payment in respect of the settled property (*cf. A.-G.* v. *Dodington*, [1897] 2 Q. B. 373, and *Inland Revenue Commissioners* v. *Priestley*, [1901] A. C. 208). If, therefore, a reversioner settled his reversion, and Settlement Estate Duty was paid under *his* will, *that* duty is allowable, subject to the other conditions, against the Estate Duty chargeable on the death of the life tenant under the primary title. For example, *A* dying in 1890 bequeathed personal property to his daughter *B* for life, with remainder to his sons *C* and *D*, and Probate Duty was paid. *C* dying in 1910 bequeathed his residuary estate, including his interest under *A's* will, to his son *E* for life, with remainder to *F*, and Estate Duty and Settlement Estate Duty were then paid. The last-mentioned duty is allowed against the Estate Duty payable on *B's* death in 1930. If *A* died after the F. A. 1894, and Settlement Estate Duty was paid under his will, there is a two-fold allowance.

As between the persons beneficially interested, the allowance is apportionable in the same manner as the burden of the duty against which it is made (*re Booth*, *Pleace* v. *Booth*, [1916] 1 Ch. 349). In other words, the allowance is deducted from the Estate Duty attributable to the property or share of property in respect of which the Settlement Estate Duty was paid, and the reduced Estate Duty is borne by the same persons and in the same proportions as the full duty would have been, in

the absence of any allowance. The persons entitled to any repayment of excess Settlement Estate Duty are those who take the property out of which that duty was originally paid. If it was paid out of the settled fund, the excess is restored to the capital of that fund: if it was paid out of an unsettled residuary estate (the settled fund having been given free of duty) the excess is a "windfall" for the residuary legatees or their representatives.

The allowance of interest on Settlement Estate Duty from the 15th August, 1914, is a separate matter. Such interest is not allowed against the Estate Duty but is to be paid to the persons who would have been entitled to the income if the Settlement Estate Duty had been added to the trust fund on the 15th August, 1914, and it is to be divided amongst those persons or their representatives according to the several interests they would have had in the income (F. A. 1914, s. 14, proviso (*b*), and see *re Sutherland, Chaplin* v. *Leveson-Gower*, [1922] 2 Ch. 782). In general the interest belongs to the estate of the deceased life tenant and should be accounted for in the Inland Revenue Affidavit of such estate. If the widow of the settlor had a first life interest and she dies after the 15th August, 1914, and the next life tenant then dies, the interest allowable on the Settlement Estate Duty on the second death will have to be rateably apportioned between both the life tenants' estates. The period during which interest is to be allowed is from the 15th August, 1914, up to the date of the occasion when the further Estate Duty becomes due, *i.e.*, the date of death of the life tenant in the case of personal property, or twelve months after the death in the case of real property (or the date of the completion of any sale within such twelve months).

The rate of interest originally prescribed was 3 per cent., but by analogy with the increased

rate on unpaid duty, imposed by the F. A. 1919, s. 30, the repayment is in practice calculated at 4 per cent. as from the 31st July, 1919.

31. In the case of property in certain British possessions, which either charge no duty on property in Great Britain or make a corresponding allowance, and are designated by the Sovereign by Order in Council, allowance is made *against the Estate Duty* payable on such property in this country, of any duty that may be payable in such British possession (F. A. 1894, s. 20, extended by F. A. 1922, s. 45).

The allowance is not in any case to exceed the amount of Estate Duty payable in this country on the same property, and it can of course apply only in cases where the deceased died domiciled in Great Britain.

Orders in Council have been made applying this provision to the following British Dominions and Colonies:—

British Possession.	Date of Order in Council.
Australia, Commonwealth of*	1916 27th June
Bahama Islands	1895 11th May
Barbados	1896 29th June
Bermudas or Somers Island	1895 11th May
British Columbia	1896 26th Oct.
British Guiana	1896 22nd Feb.
Ceylon	1895 11th May
Falkland Islands	1895 3rd Oct.
Federated Malay States (Perak, Selangor, Negri Sembilan and Pahang)** (as from 1st January 1925)	1927 27th June
Fiji	1895 24th Aug.
Gambia	1895 11th May
Gibraltar	1895 16th July
Gold Coast Colony	1895 16th July
Grenada	1909 18th Oct.
Hong Kong	1895 11th May
India, British	1895 2nd Feb.
Jamaica	1897 3rd Aug.
Labuan	1897 18th May
Lagos (now Nigeria)	1895 16th July

* This order is retrospective and applies so that the Federal duty as well as the State duty (if s. 20 has been applied) is allowable

** These States are treated as British possessions for the present purpose under the F. A. 1922, s. 45.

British Possession.	Date of Order in Council.
Leeward Islands ..	1895 16th July
Manitoba	1896 26th Oct.
Mauritius (as from 1st January 1915)	1922 14th Dec.
New Brunswick ..	1897 26th Feb.
New South Wales ..	1905 29th May
New Zealand ..	1895 2nd Feb.
Newfoundland ..	1895 8th Mar.
Nigeria (*see* Lagos).	
Nova Scotia	1898 20th Oct.
Ontario	1896 26th Oct.
Papua	1916 10th May
St. Lucia	1916 1st June
Sierra Leone	1896 8th Feb.
Somers Island or Bermudas	1895 11th May
South Australia ..	1895 11th May
Straits Settlements ..	1895 11th May
Tasmania	1897 13th Oct.
Trinidad and Tobago	1897 13th Aug.
Unfederated Malay States of Johore, Kedah, Perlis, Kelantan, Trengganu and Brunei*	1928 1st Nov.
Victoria	1896 8th Feb.
Western Australia ..	1896 1st Aug.
Yukon Territory ..	1910 10th Jan.
Also to the following Countries under the Foreign Jurisdiction Act, 1913 :—	
East Africa Protectorate (now Kenya)	1920 17th May
Gambia Protectorate	1916 6th Nov.
Nyasaland	1915 12th Aug.
Southern Rhodesia ..	1915 12th Aug.
Swaziland	1915 12th Aug.
Uganda Protectorate	1917 23rd Oct.
Wei-hai-wei	1915 24th Sept.
Zanzibar	1916 6th Nov.

* These States are treated as British possessions for the present purposes under the F. A. 1922, s. 45.

A similar allowance may be made in respect of the Consular Court fees payable in Crown Colonies and Treaty ports under Consular jurisdiction.

The section does not apply to Alberta, Cape of Good Hope (Order revoked as from 31st December, 1908), Indian Feudatory States, Natal (Order revoked as from 30th June, 1922), Northern Rhodesia, Orange River Colony, Quebec (Order revoked as from 30th January, 1930), Queensland, Saskatchewan, Transvaal and the Union of South Africa.

The colonial assets themselves should be accounted for without deduction except for debts due in the colony and extra expense of administration, as in the case of foreign property. (*See* pp. 155–157.)

The allowance against Estate Duty only applies to assets in a British possession and therefore cannot be made in respect of assets which, though possessing colonial characteristics, are in strictness English. For instance, shares in a colonial company which are registered on a register in England and are transferable in Great Britain without any act done outside, and bonds of a colonial company transferable by delivery and actually situate in England at the death.

The provisions of s. 20 of the F. A. 1894 have not themselves been applied to the Irish Free State, but a similar arrangement is effective with that country by virtue of the provisions of Part II of the Schedule to the Relief in respect of Double Taxation [Irish Free State] Declaration, 1923 (S. R. & O., 1923, No. 406). This Declaration, made under special powers to that effect contained in s. 5 of the Irish Free State (Consequential Provisions) Act, 1922, provides—

(1) Where the Commissioners of Inland Revenue are satisfied that Estate Duty is payable in the Irish Free State by reason of the death of a person dying on or after 1st April, 1923, in respect of any property situate in the Irish Free State and passing on such death, they shall allow a sum equal to the amount of that duty to be deducted from the Estate Duty payable in Great Britain in respect of that property on the same death, and

(2) Where the Revenue Commissioners of the Irish Free State are satisfied that Estate Duty is payable in Great Britain by reason of the death of a person dying on or after the said

1st April in respect of any property situate in Great Britain and passing on such death, they shall allow a sum equal to the amount of that duty to be deducted from the Estate Duty payable in the Irish Free State in respect of that property on the same death.

A corresponding arrangement, applying to deaths on or after 21st November, 1921, is in force as between Great Britain and Northern Ireland under the terms of s. 28 of the Government of Ireland Act, 1920.

32. The F. A. 1914, s. 15, introduced a provision allowing discount in respect of land or a business where there has been a second death within five years. If the Commissioners of Inland Revenue are satisfied (*a*) that Estate Duty has become payable on any property consisting of land or a business (not being a business carried on by a company), or any interest in land or such a business, and (*b*) that the person to whom such property passed has died within five years, and Estate Duty has again become payable on the same property or any part thereof, then they are to reduce the second Estate Duty as follows:—

Where the second death occurs within 1 year of the first death by	50 per cent.
Where within 2 years by	40 ,,
,, ,, 3 ,, ,, ...	30 ,,
,, ,, 4 ,, ,, ...	20 ,,
,, ,, 5 ,, ,, ...	10 ,,

But where the value on the second death is greater than the value on the first death, the latter value is to be substituted for the purpose of calculating the amount of the allowance. Thus, value on the death of *A* £6,000, and duty at, say, 5 per cent. = £300; value on the death of *B*, who dies within three years of *A*, £9,000, and duty at, say, 7 per cent. = £630. The discount is not 30 per cent. on £630, but 30 per cent. on £420 (*i.e.*,

7 per cent. on £6,000) = £126. The amount payable on *B's* death will therefore be as follows :—

	£	s.	d.
Duty	630	0	0
Discount	126	0	0
Net amount payable ...	£504	0	0

The allowance is available only where the second duty is leviable on the death of the identical person who took on the first death. If that person sells and the purchaser dies within five years the provision does not apply. The person who becomes entitled on the first death may take absolutely, for life or any lesser interest, or he may become entitled only in expectancy. If his death gives rise to a claim for Estate Duty on the same property, or any part thereof, the provision applies.

Where property within the scope of the allowance passes on the death of *A* to *B* for life, with remainder to *C*, and *C* dies in the lifetime of *B*, within five years of the death of *A*, it may be taken that *C's* reversion, as included in the property itself, passed on *A's* death, so that discount is available as regards the Estate Duty on the reversion. If the other conditions are satisfied, the death of a reversioner may be treated as a first death, whether the property is still in reversion at the time of the second death or is then in possession.

If a third death occurs within five years of the second death the provision for relief again comes into operation, and the second death is treated as the first death, and the third death as the second death. Where property within the scope of the allowance passes on the death of *A* (when Estate Duty is paid) to *A's* spouse *B* for life, and on the death of *B* (when no Estate Duty is payable) to *C*, and *C* dies within five years of *A*, the

discount is on the basis of the time which has elapsed between the deaths of *A* and *C*.

For the purposes of discount the full amount of Estate Duty is treated as having been payable on the earlier death, without regard to any allowance which may have been made on that occasion, *e.g.*, in respect of Settlement Estate Duty. Discount on the second death can still be allowed, even though the Estate Duty on the first death was covered by the allowance. If on the second death Settlement Estate Duty falls to be allowed, it is deductible against the Estate Duty after the quick succession discount has been made.

The term "land" includes buildings thereon, and also real estate and leaseholds subject to a trust or power to sell, provided there has been no actual sale before the second death. On the other hand, where settled land, on which Estate Duty was paid on the first death, has been sold, and is represented at the time of the second death by capital money liable to be laid out in the purchase of other land, the capital money is notionally the *same property* as the original land, and discount may accordingly be taken. Except in this one case the proceeds of sale of land or a business are not within the scope of the allowance.

Where part of any land has been sold between the two deaths it is necessary to apportion the original value for the purpose of seeing whether the value of the unsold portion is greater or less than the value on the second death. Where money has been spent in improving the land, or in erecting buildings, the provision for substituting the value on the first death for the purpose of ascertaining the discount will apply.

The relief as regards a business apparently applies to stock-in-trade, goodwill, plant, machinery, any excess of debts owing to the business over those owing by the business, and any bank balance so far as it is

exclusively used for the business, but not to securities for money, stocks and shares. The articles forming the stock-in-trade on the first death should be considered as a unit, and those forming the stock-in-trade on the second death as the same unit, notwithstanding that the individual articles may be different. Other items may be regarded similarly, provided that it is substantially the same business.

The provision does not apply to a business carried on by a company, even where the deceased owned practically the whole share capital. If the company were formed to take over the business after the first death, the provision would be ruled out on the ground that the property chargeable on the second death (viz., shares in the company) was not the *same property*.

It will be observed that the section refers to any *interest in* land or a business. This phrase was the subject of an important decision in Scotland in the case *Glen* v. *Inland Revenue Commissioners*, [1926] S. C. 44, in which the Lord President said, "Whatever may be the precise content of the expression, 'any interest in land' and 'any interest in a business,' it seems safe (having regard to the intention of the enactment) to say that the interest referred to must be such that the exhaustion of it in paying repeated Estate Duties will be detrimental to the landed estate or to the business, as the case may be. In other words, the interest must be such that its fate and fortune is one with the fate and fortune of the land or business . . . the fact that the *jus crediti* in the secured charge or in the loan of capital passes several times on successive deaths, and so suffers exhaustion (more or less) in the hands of those who succeed to it by the payment of Estate Duty, has no prejudicial effect on either the landed estate or the business." It follows from this decision that mortgages in England and heritable bonds in Scotland are

not "interests in land" for the purpose of s. 15, and the same applies to capital sums (*e.g.*, portions) charged on land. Rent charges, annuities or jointures charged on land and annuities charged on a business are, however, still treated as interests in land or a business. The allowance has been held to apply in a case where a testator bequeathed his business on trust for sale and gave the whole income of his estate to a beneficiary who died a few days later, before the business had been sold or dealt with (*Warren's Trustees* v. *Lord Advocate*, [1928] S. C. 806). The question was largely whether the *same property* could be said to pass on both deaths. The test appears to be whether or not on the second death it again becomes necessary to value the business to arrive at the taxable value of the property then passing. If between the two deaths the business has been sold or a binding and unconditional agreement for its sale has been effected, no allowance falls to be made.

The relief afforded by this provision to the widow, lineal ancestors, lineal descendants or collateral relations of the deceased, does not apply where they obtain (*i.e.*, on the second death) a greater relief from Estate Duty under s. 1 of the Death Duties (Killed in War) Act, 1914 (*see* p. 259).

33. Where the aggregated estate passing on death just reaches over one of the steps in the scale of rates, the additional duty is not to exceed the amount which has attracted the higher rate of duty (F. A. 1914, s. 13 (1)). Thus, on the death of *A* three aggregable estates pass, value £4,000, £7,700 and £9,400. The total is £21,100 and the rate is *primâ facie* 9 per cent. The last £100 thus attracts £219 extra duty, but under this provision the £100 is substituted for the extra duty, and the amount payable is therefore £1,780 (*i.e.*, 8 per cent. on £21,000=£1,680, plus £100), which must be rateably apportioned between the three estates. *See* pp. 117–119.

34. Agricultural property, to the extent of its purely agricultural value, bears Estate Duty at the rates fixed by the F. A. 1919. The excess, if any, of the market value over the agricultural value, is chargeable at the increased rates imposed by the F. A. 1930 (*see* F. A. 1925, s. 23, pp. 144–145, *supra*).

CHAPTER V.

ESTATE DUTY.—PRACTICE.

Free Estate.

WHERE the deceased leaves free estate in Great Britain, the first requirement is a grant of Probate or Letters of Administration in England or Confirmation in Scotland. An overseas grant, duly re-sealed in England or Scotland, is equivalent. Persons administering an estate without such a grant become accountable for duties and are also liable to penalties (*inter alia*, Stamp Act, 1815, s. 37; Crown Suits, &c., Act, 1865, s. 57; Revenue Act, 1884, s. 11; L. P. A. 1925, s. 205 (1) (xviii); L. R. A. 1925, s. 3 (xvii); *New York Breweries Co. Limited* v. *A.-G.*, [1899] A. C. 62). For special cases where a grant is not required, *see* pp. 285–289.

To lead to the British grant (or re-seal) an inventory of the value of the estate is required. It is known in England as the Inland Revenue Affidavit (F. A. 1894, s. 22 (1) (*m*)). The forms in use, which vary according to the amount of the estate and the existence or not of settled property, are as follows:—

England.

B–2.—Inland Revenue Affidavit for Probate or Administration: To be used where there is *no* settled property, and the *gross* principal value of the free and other unsettled property, real and personal (including property over which

the deceased had and exercised by will a general power of appointment, and property which, by default of exercise of the power of appointment, belonged to the deceased absolutely), in respect of which Estate Duty is leviable on the death of the deceased, does not exceed £500, and either no duty is payable or it is desired to pay the fixed duty of 30s. or 50s.

B–4.—Inland Revenue Affidavit for Probate or Administration: To be used instead of the *Form* B–2, where there *is* settled property (not being property over which the deceased had and exercised by will a general power of appointment, or property which, by default of exercise of the power of appointment, belonged to the deceased absolutely) in addition.

No. 27.—Summary of Duty and Interest: to accompany *Form* B–4.

NOTE.—Where in the circumstances of the case the *ad valorem* Estate Duty in respect of the net estate is less than the fixed duty, and it is desired to pay the smaller duty, the *Form* A–4, A–6, or A–7, whichever is appropriate, should be used, and not the *Form* B–2 or B–4.

A–4.—Inland Revenue Affiadvit for Probate or Administration: To be used where the property in respect of which Estate Duty is leviable consists *exclusively* of *free* personal property situate in Great Britain passing under the deceased's will or intestacy; *except* where the *Form* B–2 is applicable.

No. 16.—Summary of Duty and Interest: to accompany *Form* A–4.

A–6.—Inland Revenue Affidavit for Probate or Administration: To be used where the property in respect of which Estate Duty is leviable consists *exclusively* of *free* personal and real property situate in Great Britain passing under

the deceased's will or intestacy, except where the *Form* B–2 is applicable.

No. 17.—Summary of Duty and Interest: to accompany *Form* A–6.

A–7.—Inland Revenue Affidavit for Probate or Administration: To be used where the above forms and those mentioned below are not applicable.

No. 28.—Summary of Duty and Interest: to accompany *Form* A–7.

Y–1.—Inland Revenue Affidavit for Probate or Administration: To be used where the deceased died domiciled outside Great Britain and no property situate in Great Britain passed at his death, but a grant is required in respect of assets since transmitted to this country.

Z–1.—Inland Revenue Affidavit: To be used where the grant is only required for trust property and no Estate Duty is payable.

A–5.—Inland Revenue Affidavit: To be used where a second or subsequent grant is required in respect of property which was within the operation of a previous grant. Where it was not within such operation, the same form should be used as for an original grant.

The forms usually employed are—

A–4.—Free personal estate only.

A–6.—Free real and personal estate only.

A–7.—Where there is settled property as well on which duty is payable.

B–2.—For payment of the fixed duties simply.

B–4.—For payment of the fixed duties and for payment of *ad valorem* duty on settled property as well.

If a grant is required in respect of settled land only, *Form* A–7 may be used. Paragraphs 3–5 and 8–13

should be struck out and the remaining paragraphs adapted. When the affidavit is presented to the Estate Duty Office an assessment is made in due course if it is desired to pay the Estate Duty or an instalment thereof on the affidavit. But if the duty is not due and it is not desired to pay it on the affidavit, or if no duty is payable, or if it has been paid on a prior Inland Revenue Affidavit or account, an appropriate endorsement is made on the last page of the affidavit.

Scotland.

B–1.—Inventory and relative Statement for Estate Duty: To be used only where the Inventory is to be given up in the Commissary or Sheriff Court under the F. A. 1894, s. 16 (1), the *gross* value of the property chargeable with Estate Duty (exclusive of property settled otherwise than by the will of the deceased) not exceeding £500, and either no duty is payable or it is desired to pay the fixed Estate Duty of 30s. or 50s.

A–4.—Inventory and relative Statement for Estate Duty: To be used where the whole property liable to Estate Duty consists *exclusively* of Executory estate in Great Britain and *ad valorem* duty (if any) is to be paid.

A–5.—Warrant to accompany *Form* A–4.

A–1.—Inventory and relative Statement for Estate Duty, where *Form* B–1 or A–4 is not applicable.

A–2.—Warrant to accompany *Form* A–1.

A–7.—Supplement to Inventory, corrective of value.

No. 16.—Form to accompany *Form* A–1, for particulars of Heritage.

Grants of Representation not required.

The following is a summary of some of the principal provisions enabling specific property of deceased persons

to be transferred without grants of representation. Unless otherwise stated, they apply only where the total amount payable from the source in question does not exceed £100. Except in the cases noted in Chapter IV, they do not exempt the asset from duty if the whole estate exceeds £100. If Estate Duty is payable on any of these assets, and a grant is not required in respect of other property, the duty may be accounted for on *Form* C–1 (in duplicate). If no duty is payable and a certificate of non-liability is required, the appropriate form of application is No. 22 in England, No. 20 in Scotland.

Army and Air Force. Pensions and Yeomanry Pay Act, 1884, s. 4; Regimental Debts Act, 1893, ss. 7, 9 and 16 (*see also* p. 261); and (now unimportant) Army Pensions Act, 1830; Army Prize Money Act, 1832; Army (Artillery, &c.) Pensions Act, 1833; Army Prize (Shares of Deceased) Act, 1864; Indian Prize Money Act, 1866; 31 & 32 Vic., c. 90.—Pay, pension, prize money and surplus property in official control.

Building Societies Act, 1874, s. 29.—On intestacy only. Limit £50.

Civil Service. Superannuation Act, 1887, s. 8; Superannuation Act, 1914, s. 1; Superannuation (Ecclesiastical Commissioners and Queen Anne's Bounty) Act, 1914, s. 7.—Salary, pension or gratuity. For dockyard workers, *see* Navy, etc.

Fire Brigade Pensions Acts, 1925 (s. 12) and 1929 (s. 1 (*c*)).—Pension, allowance, gratuity or return of rateable deductions.

Friendly Societies Act, 1896, ss. 56–59.—By nomination or on intestacy. (Up to £100 can be nominated even if more is payable, but a grant is necessary for any excess. A certificate, that duty has been paid or is not payable, is required if the amount, less funeral expenses, exceeds £80. Nominated sums are chargeable as free estate.)

Funds in Court. Supreme Court Funds Rules, 1927, r. 62; County Court Rules, 1903, O. xxxvii, r. 6; Lancaster Court of Chancery, Regulations dated 9th December, 1913, r. 13.—On intestacy only, where whole estate does not exceed £100. Workmen's Compensation Act, 1925, Second Schedule, para. 2.—Compensation money in County Court or Sheriff Court to which *deceased dependent* was entitled. No limit of amount. (A certificate as to duty or equivalent declaration by the claimant is required.)

Government Insurance. Government Annuities Act, 1882, s. 6; Provident Nominations and Small Intestacies Act, 1883, s. 3.—By nomination only.

Government and Savings Bank Annuities. Government Annuities Act, 1929, ss. 20, 21, 56 and 57.—Without proof of title—limit £100; or on production of a grant of representation by any Court in the United Kingdom, Isle of Man or Channel Islands—no limit.

Government Stock. F. A. 1918, s. 38 (2); War Loan Act, 1919, s. 5.—Holdings of Colonial soldiers, etc. Limit £500 nominal value.

NOTE.—(1) Stock on the Post Office Register (*see below*) or held through a Savings Bank can be dealt with under a grant issued in the Isle of Man or Channel Islands. There is no limit of amount but a certificate as to duty is required (Savings Banks Act, 1920, s. 8). (2) Stock up to £100 actual or nominal value, whichever is less, may be transferred by the Bank of England to the Post Office Register (*see below*) (F. A. 1918, s. 38 (1) as amended by F. A. 1930, s. 52).

Industrial and Provident Societies Acts, 1893 (ss. 25 and 27) and 1913 (ss. 5 and 6).—As Friendly Societies (but the certificate is required whenever the gross amount exceeds £80).

Ionian Bank (Limited) Act, 1899, s. 2.—Shares in the bank held by Greek subjects. No limit.

Loan Societies Act, 1840, s. 11.—On intestacy only. Limit £50.

Merchant Shipping Act, 1894, s. 176.—Property of deceased seamen, etc., in hands of Board of Trade.

National Health Insurance. N. H. I. (Approved Societies) Regulations, 1924, Arts. 201–204; N. H. I. (Deposit Contributors) Regulations, 1924, Art. 22.—By or without nomination. No limit of amount. (A certificate, that duty has been paid or is not payable, is required if the amount exceeds £50.)

Navy and Marines (Property of Deceased) Act, 1865, s. 6; Naval Pensions Act, 1884, s. 2.—"Residue" in books of Admiralty (*see also* p. 262), pensions, gratuities and allowances. The provisions extend to dockyard workers, etc., and widow-pensioners. Naval Prize Act, 1918, s. 4.—Additional prize money where the other Acts have already been utilised (even if the further payment makes the total over £100).

Police Pensions Act, 1921, s. 14 (6); Constabulary (Ireland) Act, 1922, Schedule, Part II, para. 15 (3).—Pensions, allowances or gratuities.

Policies of Life Assurance. Revenue Act, 1889, s. 19, varied by Irish Free State (Consequential Adaptation of Enactments) Order, 1923.—Policies effected by a person who dies domiciled elsewhere than in Great Britain or Northern Ireland. No limit.

Post Office Savings Bank Regulations, 1921, Arts. 65–81, 88 and 93–97.—Cash deposits, by or without nomination. No limit of amount in case of nomination. (A certificate, that duty has been paid or is not payable, is usually required. Sums paid to a nominee or surviving joint holder are chargable as free estate. In the case of depositors dying domiciled in Northern Ireland, the Isle of Man and the Channel Islands, the deposits are treated as situate in the place of domicile.) P. O. Register Regulations, 1925, Arts. 19–24 and 42.—Stock on P. O. Register, as cash deposits.

Savings Certificates Regulations, 1919, Arts. 28–39, 45 and 53–55.—As for deposits in the P. O. Savings Bank.

Teachers (Superannuation) Act, 1925, First Schedule, para. 8.—Superannuation allowance, gratuity or return of contributions, in England or Wales. Superannuation Scheme for Teachers (Scotland), 1926, para. 19.—Retiring allowance or gratuity.

Trade Unions Act Amendment Act, 1876, s. 10; Provident Nominations and Small Intestacies Act, 1883, ss. 7 and 10.—As Friendly Societies.

Trustee Savings Banks. Savings Banks Act, 1887, s. 3; Savings Banks Act, 1920, ss. 4 and 10; Trustee Savings Banks Regulations, 1929.—As in Post Office cases, except that the £100 limit applies to nominations.

Valuation.

The general principles of valuation are dealt with in Chapter II (pp. 133–135), and are merely summarised or referred to in the practice notes below.

The Inland Revenue Affidavit or Inventory should contain all particulars necessary to show the principal value of each item of property comprised in the estate, *i.e.,* the price which, in the opinion of the Commissioners, the property would fetch if sold in the open market at the time of the deceased's death (F. A. 1894, s. 7 (5)). Such value is to be ascertained by the Commissioners in such manner and by such means as they think fit (F. A. 1894, s. 7 (8)). In the first instance, however, the value should be ascertained by the accountable parties, either by estimating it themselves or with professional assistance. In all cases full details should be given, showing the basis of valuation. If the Commissioners are not satisfied with the value so obtained they may appoint their own valuer, and in such cases the cost is borne by them (F. A. 1894, s. 7 (9)), but not where they merely request a professional valuation.

Where the property has actually been sold within a short time after the death of the deceased, the gross

sum realised may generally be taken as the principal value, but no deduction may be made for expenses of sale such as solicitors' or auctioneers' charges, printing, or advertising. If, however, money has been spent on the property since the death, other than for ordinary expenses of upkeep, so as to render it fit for sale or to realise a larger price, allowance might in certain cases be claimed.

Where the deceased was a considerable owner of particular property, no reduction is to be made on the ground that the market would be depressed if the whole property were placed on the market at once, but if the death of the deceased has caused a depreciation in the value the Commissioners are required to take such depreciation into account (F. A. 1910, s. 60 (2)).

The above remarks apply generally to property the value of which is not at once ascertainable, but it will be convenient to consider in detail a few of the more frequently recurring species of property.

1. *Stocks and Shares.*—The values should be based on the prices of the Official Daily List of the London Stock Exchange. If, however, the deceased resided in the neighbourhood of some other Stock Exchange, prices based on a list issued by that Exchange are usually accepted.

Quoted prices of stocks or shares generally show a higher and a lower closing price, the former being in effect the price which a purchaser would have to pay and the latter the price a vendor would get if he sold. The value for Estate Duty is ascertainable by taking the lower closing price and adding to it one-fourth of the difference between it and the higher price. For instance: if stock was quoted on the day of death at 96–98, the value on which Estate Duty is payable is $96 - \frac{98-96}{4} = 96\frac{1}{2}$. When, however, bargains have been done for cash on the particular dates, the securities

may be accounted for at the mean of the different prices, or if there has been only one bargain, at the price of that bargain.

Where the death occurs on a Sunday or other day for which no quotations are issued, the price for the last day before, or for the next day after, the death, on which quotations were issued, should be taken.

Where the price does not include the dividend or, in other words, the quotation is "ex div.," the forthcoming dividend must be separately accounted for. Generally, however, the quotation is "cum div.," and thus the dividend is included in the price and should not be separately accounted for, nor should it be apportioned to the date of death.

Where securities are not officially quoted, the values should be evidenced by—(*a*) published quotations indicating the values at the date of death, such as local share lists or quotations published in local or financial papers or share lists issued by the exchanges of provincial towns, (*b*) certificates as to value furnished by a qualified broker acquainted with the securities in question, or (*c*) letters from the secretaries of the companies or corporations certifying the values on the date of the deceased's death. These letters should contain particulars of any actual transactions in the securities, on or about the date of death.

In the case of private companies, it may also be necessary to produce recent balance sheets and profit and loss accounts for consideration by the Commissioners. The principal value is the price which, in the opinion of the Commissioners of Inland Revenue, the shares would fetch if sold in the open market on the terms that the purchaser should be entitled to be registered as the holder of the shares, notwithstanding any restriction in the company's Articles (pp. 138–139).

As the values of stocks and shares on the date of death, ascertainable as above, can be fixed once and for all, any subsequent rise or fall, however great, is immaterial and will not give rise to any claim for further duty or for a return of duty. Where, however, securities are not quoted and their value at the date of death cannot be accurately determined owing to special circumstances, such as the speculative nature of the undertaking or the absence of any dealings in them (as in the case of private companies), a claim for re-adjustment of the duty paid may arise if within a reasonable time of the death it is possible, owing to a sale or other circumstances, to determine with greater precision what actually was their value at the date of death.

Where the deceased controlled the company, or there is a claim against the company under the F. A. 1930, s. 35, the shares fall to be valued by reference to the company's assets and not on the basis of market value (pp. 135–138).

Shares may in certain cases be a minus quantity, as where at the death they have no value and a call of unpaid-up capital has been made, or where a sum would have to be paid by the vendor in order to have the shares taken over by some other person. Subject to satisfactory evidence being adduced, the sum payable for calls or the consideration payable to a purchaser to induce him to take over the shares would be deductible against the estate.

2. *Mortgages.*—In estimating the value of mortgages subject to the Rent and Mortgage Interest Restriction Acts, it is thought that some deduction against the nominal amount of the mortgage debt may reasonably be claimed in respect of the restrictions, say from 5 to 10 per cent.

3. *Policies of Assurance.*—The amount receivable from the assurance company, including bonuses, should

be accounted for, and if payment is not obtainable until some time has elapsed since the death, a reasonable deduction by way of discount should be claimed. In the case of a policy on the life of another person, the saleable value at the deceased's death should be accounted for, and the company's estimate of such value up to £500 is not as a rule questioned. The saleable value is not necessarily the same as the surrender value. The latter value is what the company would pay for a surrender of the policy and is based on the assumption that the assured is in good health. It frequently happens that the saleable value is higher, and to ascertain the true market value, a valuation by an actuary or other independent person may be necessary. The market value of the policy at the date of death may be accounted for even though between that date and the date of lodging the Inland Revenue Affidavit the assured person has died.

4. *Furniture, household goods, stock-in-trade, farming stock, and outdoor effects.*—The value can in many cases be estimated by the accountable parties, but it is not sufficient merely to account for a round sum. The value should be estimated in detail, and where it is considerable a detailed professional valuation and inventory are desirable. The Commissioners have, however, no power to compel the accounting parties to employ a professional valuer. Where the deceased possessed pictures by artists of repute or articles of furniture having a special value, detailed particulars should be supplied, giving a separate value for each article and the name of the artist or creator. The Commissioners may in such cases employ their own art expert to inspect and report to them as to the value. Works of art, etc., in respect of which it is intended to apply for a remission of duty or to claim exemption, should be included in a separate schedule (*see* pp. 264–266). The estimate of farming stock in the case of a

tenant farmer should include the tenant right, such as unexhausted improvements, growing crops, etc. In Scotland, it has been decided that the value of unexhausted manures, as such, was not chargeable with Estate Duty (*Lord Advocate* v. *Reid's Trustees*, [1921] 2 S. L. T. 38).

5. *Assets of the deceased's business or profession.*— Where the deceased was in partnership, a balance sheet signed by the surviving partner or partners is necessary, showing the value of the deceased's share. This value is the real value of the share and not necessarily that at which the surviving partners have power to take over the share. The partnership deed or the draft or a copy thereof should in all cases be forwarded to the Estate Duty Office for perusal. In ascertaining the value of the deceased's business or his share in a business, the goodwill should be taken into account where the business carries goodwill. This value can in general be estimated by taking so many years' purchase, according to the circumstances of each case or the custom of the trade, of the net profits of the business. Even if goodwill does not form part of the deceased partner's share, it is liable to duty if it passes by a gratuitous title on his death as, for instance, where under the partnership articles he has power by a nomination in writing (not a will) to appoint his share of goodwill to his son and such power is exercised.

Where the business has goodwill attached to it, the basis upon which the estimate of value is calculated should be given.

The gross amount of the book debts of a business should in all cases be given and the amount deducted for bad and doubtful debts should be shown.

If the same business passed to the deceased on a previous death within five years, an allowance for *quick succession* may be available (pp. 276–280).

6. *Ships and shares in ships.*—A detailed valuation should in all cases be supplied.

7. *Interests in expectancy.*—The special provisions on this subject are dealt with on pp. 139–143. Shortly, the parties have to decide whether they will pay duty at once or postpone payment until the property falls into possession. In the former case they pay duty on the value of the reversionary interest. In the latter case they pay duty on the value of the property at the time it falls into possession (F. A. 1894, s. 7 (6)). They may elect at any time before a grant of representation has been taken out, even though the reversion may in the meantime have fallen into possession. But after the grant is obtained, if they wish to pay duty before the reversion falls in, it can only be done by way of commutation, which is generally agreed to by the Commissioners if the life tenant is in ordinarily good health and the circumstances render it desirable to commute (F. A. 1894, s. 12). The duty is assessed on the value of the property as if it were in possession and discounted at 4 per cent. for the life of the life tenant. If the reversion may fall in on other contingencies than death the allowance in respect of the life interest falls to be reduced.

Whether the option to defer payment of duty on an interest in expectancy is exercised or not, it is necessary to determine its value at the date of death for the purpose of ascertaining the correct rate of duty on the property in possession. In general, the value can be estimated by deducting from the principal value of the property at the date of death the value of the life interest. Thus: suppose the deceased were entitled to a sum of £1,000 on the death of *A.*, aged sixty, who survives him; $4\frac{3}{4}$ per cent. interest on £1,000 is £47 10s. the value of which, for a life aged sixty, according to Table I in the Succession Duty Act (*see* p. 566), is

£461 14s. 6d. Deduct this sum from £1,000 and the balance, £538 5s. 6d. may be taken as representing the value of the reversionary interest.

Instead of calculating interest at a fixed percentage, the average net annual income (without deduction for Income Tax) receivable by the life tenant may in the case of ordinary trust investments be taken and its value for the life of the life tenant deducted from the principal value of the property.

Where the reversion is of considerable value or is dependent upon contingencies which may or may not happen, or where from any other circumstances it is difficult to arrive at its true value, a valuation by an actuary may be necessary. In these cases the basis of the actuarial calculation should in all cases be shown. In practice, actuarial calculations up to £2,000 are generally accepted, but the Commissioners may question them, and in cases of valuations above that sum the question of value would be submitted for actuarial consideration on behalf of the Revenue. In the case of contingent reversions, *i.e.,* interests which may never fall into possession, it is not sufficient to account for a merely nominal sum. A fair value, having regard to all the circumstances, should be accounted for (*Lord Advocate* v. *Pringle* (1878), 5 Rett. 912).

If the reversion is expectant on the joint lives or on the death of the survivor of two or more persons, the amount which may be deducted may be calculated in a similar way by means of the Succession Duty Act tables. These tables are based upon a 4 per cent. rate of interest.

If the rest of the estate does not exceed £1,000, it may be treated as an estate by itself, for the reversion is property settled otherwise than by the will of the deceased (F. A. 1894, s. 16 (3)). For example :—

	£	s.	d.
Free estate	800	0	0
Reversion—value at death	300	0	0
Property passing under marriage settlement	4,800	0	0

The free estate forms an estate by itself and is not aggregable, and the rate is 2 per cent. Legacy Duty and Succession Duty are not payable thereon.

The reversion is aggregable with the settled property, and, the total being over £5,000, duty is payable on it and on the settled property at 4 per cent.

If the free estate and the reversion together do not exceed £1,000, it is open to the accountable parties to treat them as together forming the "estate by itself." The estate so constituted would be exempted from aggregation and from any other duties.

8. *Moveable Property outside Great Britain.*—As to the liability of this property to Estate Duty, *see* pp. 100–115. Where it forms part of the free estate, it is chargeable if the deceased died domiciled in Great Britain, but not otherwise. It may be added that unless it is otherwise claimed the domicile of a deceased person is, for the purpose of Estate Duty, assumed to have been in Great Britain. Where a domicile outside Great Britain is claimed, unless the fact speaks for itself, a statement is in general necessary showing the deceased's domicile of origin, *i.e.*, the domicile of his parents at his birth, and giving a short account of his life history up to the date of his death with the view of showing where he intended to make his permanent home. If the domicile claimed is different from the domicile of origin, evidence should be given to show that the deceased had in fact abandoned his domicile of origin and definitely assumed the domicile claimed for him. (As to domicile generally, *see also* pp. 388–389.)

The value of property abroad should, where necessary, be calculated at the rate of exchange at the date of death. Deduction may be taken for foreign debts and foreign duty and also for extra expense of administration, if incurred, not exceeding 5 per cent. (F. A. 1894, s. 7 (2), (3) and (4); pp. 155–157, *supra*).

If the assets are in a British possession (including Ireland) with regard to which provisions against double taxation are in force (pp. 273–276), they should be accounted for as above, and the allowance in respect of the non-British duty should be claimed in the Summary of the Affidavit. A certificate from the Colonial or Irish Court or Revenue Authorities, certifying the amount of the duty paid there, and giving particulars of the assets on which duty was paid, should also be furnished. In the case of Indian assets or other currency not in pounds sterling the amount paid should be expressed in English currency at the rate of exchange on the date of payment. The Colonial duty will then be allowed against the Estate Duty, but only to the extent of the Estate Duty payable on the Colonial assets, so that if the Estate Duty is less than the Colonial duty the balance cannot be allowed. Although the Estate Duty may be balanced by the Colonial duty, the value of the Colonial assets is still aggregable with the rest of the estate for the purpose of rate. If the duty on the Colonial assets covers income since the death (as, for instance, income up to the date when the Colonial grant was obtained), the Colonial duty on such income is not allowable, nor, where the Colonial duty covers immoveable property in the Colony, is the proportion of duty attributable thereto. The allowance is not to be diminished by the fact that the value for Estate Duty has been reduced by extra expenses of administration. If the certificate is not available when the Inland Revenue Affidavit is lodged, a provisional allowance can be made if there is

a *primâ facie* case for it, on an undertaking being given to produce the certificate as soon as it is received, and to pay any further British duty without delay. In the alternative, a Corrective Affidavit claiming the allowance should be brought in subsequently.

A somewhat similar practice prevails as to Court fees paid at British Consular Courts having extra-territorial jurisdiction in respect of moveable assets within the jurisdiction of such Courts, in connection with grants of representation. Application should be made for repayment of the fees, and should be accompanied by a certificate from the Consular Court vouching the payment of the Consular fees in respect of assets which are within the jurisdiction of that Court and are included in the Inland Revenue Affidavit. A Corrective Affidavit is not required. The fees are transferred by the Foreign Office to the Revenue account, and when this is completed, the amount is repaid or made available to satisfy any outstanding claims for duty.

Where an Order in Council has not been passed with regard to any British possession, the duty paid there can only be allowed against the value of the property and not against the Estate Duty thereon.

9. *Freehold and Leasehold Property.*—A form of schedule (No. 37A in England, No. 16 in Scotland), indicating the particulars required, is supplied with the Inland Revenue Affidavit or Inventory. It is not necessary to obtain a professional valuation, and the value may usually be estimated by taking so many years' purchase of the net annual value. To arrive at the latter the gross rental if let, or the gross property tax assessment if unlet or occupied by the deceased, should be taken and from it deducted the annual outgoings paid by the owner: viz., repairs, insurance premiums, tithe rent charge, land tax, chief rent, or ground rent in case of leasehold property, and any other permanent annual

outgoings not including property tax or expenses of management. The outgoings deductible are only those paid by the landlord, so that if rates and repairs are paid by the tenant they may not be deducted. The amount deductible for repairs depends upon the class and condition of the property, and may vary from 10 to 20 per cent. or even more of the gross rental.

In estimating the value of property within the scope of statutory rent restriction in the occupation of the deceased, the value attributable to the element *vacant possession* should be included (*Welby-Dawson* v. *Inland Revenue Commissioners* (1921), 97 "Estates Gazette" 183).

If the deceased was the owner of a manor, particulars should be given of the manorial payments (if any) to which he was entitled at his death, and of any sums due as compensation for copyholds enfranchised by the Law of Property Act, 1922, s. 128, and the value thereof at his death should be accounted for.

As to ascertaining the value of licensed property, *see ex parte Ashby's Cobham Brewery Company, Limited, re "The Crown," Cobham*, and *ex parte Ashby's Staines Brewery Company, Limited, re "The Hand and Spear," Woking,* [1906] 2 K. B. 754.

Where a share only of property passes it should be valued independently and not on the footing that the property will be sold as a whole; so that where an undivided moiety of property passed on a death, it was decided that a reasonable allowance ought to be made from half the value of the whole in order to arrive at the value of such moiety and this should be done even though the beneficiary is already the owner of the other moiety (*Cust* v. *Inland Revenue Commissioners* (1917), 91 "Estates Gazette" 11).

Special provisions affecting purely agricultural property will be found on pp. 143–145.

When real and leasehold property come before the Estate Duty Office the question of value is referred to the Valuation Branch for an expression of opinion. The value is then gone into by the Government valuers, who, if necessary, communicate direct with the accountable parties or their representatives. On determination of the value a report (which in the case of agricultural property states separately the purely agricultural value) is sent to the Estate Duty Office, and a statement prepared in the Office, of any further duty payable on any increase or of any duty returnable on any decrease, is sent to the accountable parties without the necessity for them to render a Corrective Affidavit. Should the amended value not be agreed to, however, the parties are entitled to appeal within thirty days in accordance with the provisions of the F. A. 1910. *Form No.* 35 should be used for giving notice of appeal in English cases, and *Form No.* 35–1 for notice of withdrawal of appeal. The corresponding Scottish forms are *Nos.* 15 and 15A.

In practice the Valuation Branch is usually prepared to discuss questions of value, informally and without prejudice, prior to the grant.

Timber is not liable to Estate Duty unless sold (pp. 145–148). If the property includes timber, a separate value may be placed upon the latter, but Estate Duty is not paid thereon and it is not taken into account for the purposes of rate. But on sales taking place Estate Duty should be accounted for on *Form* C–1 in duplicate on the net proceeds of sale from time to time received after deducting necessary outgoings. Should the timber be sold standing, either with or apart from the land, Estate Duty is payable on the value of the timber at the date of death, with an allowance for Estate Duty already paid in respect of periodical sales. A leaflet (No. 12) dealing with Death Duties and Income Tax on Woodlands is obtainable, free of charge, from

the Forestry Commission, 22 Grosvenor Gardens, London, S.W.1.

In the case of land (including leaseholds) or an interest therein passing on a second death within five years, discount on the Estate Duty should be claimed under the F. A. 1914, s. 15 (*see* pp. 276–280). It will be necessary for the parties to show that the person who took on the first death is the one who has died within five years, and that the land or interest therein passing on the second death is identical with the property passing on the first death. If the value on the second death is higher than the value on the first death, the former value is to be taken for the purpose of calculating the discount. The rate and amount of duty on the first death are immaterial.

Income up to the Death.

The deceased's estate is to include all income accrued upon the property included therein down to and outstanding at the date of death (F. A. 1894, s. 6 (5)). Income accrued means, it is thought, accrued within the meaning of the Apportionment Act, 1870, s. 2. Therefore, besides arrears, an apportionment of rents, mortgage interest, income from property of which he was the life tenant, pensions, annuities, director's fees, profits of business, etc., should be included in the Affidavit.

As regards settled securities of which the deceased was life tenant, a distinction should be drawn between dividends *declared and paid out of profits* and dividends *payable as of right*. In the first case the life tenant's estate is entitled to the whole or an apportionment of a dividend declared and paid, according as he lived through the whole or only part of the half-year or other period *in which it was earned and for which it was declared*. In the second case, which includes government,

corporation and debenture stocks, the life tenant's estate is entitled to the whole or an apportionment of a dividend, according as he lived through the whole or only part of the period *for which and at the end of which* it was paid. If any dividend or apportionment, to which the life tenant's estate is entitled, is included in the valuation of the securities in the account of the settled property, deduction may be taken in the account. If the life tenant had alienated his interest, it seems that such a deduction could be refused, on the ground that under the F. A. 1894, s. 7 (5), the value for duty is the market price of the securities at the date of death. It will be remembered that, where settled securities are sold cum dividend after the life tenant's death, his estate is *not* ordinarily entitled to an apportionment of the price, as partly representing accrued income (*Bulkeley* v. *Stephens,* [1896] 2 Ch. 241).

Deductions.

The general rules on this subject will be found on pp. 148–157.

After specifying the assets in the Inland Revenue Affidavit, deduction may be taken for debts due from the deceased and for funeral expenses.

The debts must have been incurred by the deceased for full consideration in money or money's worth and for his sole benefit and so that he alone is liable (F. A. 1894, s. 7 (1)). Voluntary debts are not deductible, nor are guarantee debts, unless the estate is called upon to pay and repayment cannot be obtained from the principal debtor. Where the estate may be liable for future rent under a tenancy agreement, or for dilapidations under a lease or, in the case of a clergyman, for dilapidations to the rectory or vicarage, no deduction should be taken until the actual amount of liability is ascertained and paid; and it may be necessary to make a claim for

return of duty on these grounds by Corrective Affidavit after the grant of representation has been obtained. Rent due after the death can only be allowed if the tenancy created by the deceased cannot be got rid of or the house sub-let. If the deceased's family continues beneficially to occupy the house after his death under the tenancy created by the deceased no allowance can be claimed, as the payment of rent after the death is for their benefit. But if the house cannot be let and the landlord accepts a surrender of the tenancy on payment of a lump sum, such sum may be deducted as well as rent up to the date of surrender.

Where the deceased has bound himself for consideration in money or money's worth to pay an annual sum to another person, deduction may be taken of the value of such sum according to the tables in the Succession Duty Act. Where, however, the liability was voluntary, no deduction may be taken (F. A. 1894, s. 7 (1) (*a*)).

As regards the deduction of other annuities, *see* pp. 153–155.

Mortgage debts created by the deceased for full consideration in money or money's worth, or by a predecessor in title, may be deducted against the free estate. In the case of settled property, a mortgage, created by the deceased life tenant and the successor together, may usually be deducted without reference to the question of consideration, and an apportionment of interest up to the death may be deducted against the deceased's estate.

Where the property consists of copyholds enfranchised by the Law of Property Act, 1922, valued as freehold, deduction may be taken for the value of any manorial payments to which the lord remains entitled, or, if a compensation agreement has been entered into, deduction should be taken of the value of such compensation at the date of death, whether it consists of a lump sum or of periodical payments spread over a term of years.

In the case of small estates not exceeding £500 gross where the fixed duties are paid, mortgages and incumbrances on real estate and leaseholds can only be deducted—

(*a*) If created by a predecessor in title to the deceased (F. A. 1894, s. 16 (1)), or

(*b*) If created by the deceased for the purpose of purchasing the property (F. A. 1910, s. 61 (2)).

Funeral expenses should be of reasonable amount having regard to the position of the deceased and the size of the estate. The cost of a tombstone or of mourning does not form part of the funeral expenses for Estate Duty purposes (*Goldstein* v. *Salvation Army Assurance Society*, [1917] 2 K. B. 291, per Rowlatt, J., at p. 295). In practice, however, a strictly moderate amount for mourning might be allowed.

In considering the amount of duty payable, the provisions of the F. A. 1914, s. 13 (1), for reduction of the full amount of duty where the margin above the next step in the scale is small, should be borne in mind (*see* pp. 117–119).

Corrections.

Where further assets are discovered or it is found that assets were wrongly included in the original Affidavit or the amounts or values were incorrect, a Corrective Affidavit should be rendered on *Form* D–1 to adjust the duty (F. A. 1894, s. 8 (7) and (12)). Where it is for additional duty it should be rendered in duplicate, one copy being signed by the executors, but it need not be sworn to in the first instance unless entirely new assets are accounted for. If it is for return of duty it need not be rendered in duplicate but should be signed and sworn to by all the executors, and should be accompanied by the Probate or Letters of Administration. In Scottish

cases a Corrective Inventory (again numbered D–1) is required together with a warrant (*Form* D–4). If property other than that in the Inventory is affected, a Supplement (*Form* D–5) is rendered in addition. The Corrective Inventory need not in any case be given up in duplicate, and the Confirmation need not be produced.

In return of duty cases, the interest actually paid on the duty returnable is allowed, but not interest for the time the money has been in the hands of the Crown. The Crown is not in fact chargeable with interest unless the over-payment was due to an over-valuation by the Commissioners (F. A. 1894, s. 8 (12)) or interest is allowed by the Court (F. A. 1894, s. 10 (3)).

Accounts.

Estate Duty must be paid on the Inland Revenue Affidavit on the deceased's personal estate. Estate Duty may also be so paid on his real estate, gifts *inter vivos*, and any other property passing (F. A. 1894, s. 6 (2)), but if it is not so paid then a separate account on *Form* C–1 in duplicate should be rendered. The account should be signed and sworn to by the accountable parties (*see* pp. 173 and 183). The value in the case of a gift *inter vivos* should be ascertained as at the date of death (*see* p. 35).

Where the duty on real estate is being paid by instalments, *Form* C–3 (not in duplicate) should be used for the second and subsequent instalments. If the property is sold, and also, under the L. P. A. 1925 and L. R. A. 1925, if it is exchanged or mortgaged, all the unpaid instalments must be at once accounted for, and if there is timber on such land, Estate Duty must be accounted for on the value thereof as at the date of death.

Should any correction of an account be necessary (as where further assets are recovered or the value was

wrongly stated), a corrective account on *Form* D–2 should be rendered on similar conditions to *Form* D–1. Where it is for return of duty it should in all cases be accompanied by the stamped and receipted account on which duty was originally paid.

Where Estate Duty is payable on the cesser of an interest, if the interest extends to the whole income of the property, Estate Duty is payable on the principal value of that property (F. A. 1894, s. 7 (7) (*a*)). Thus, if under the will of *A*, who died before the F. A. 1894, *B*, who dies in 1910, is entitled to an annuity of £50 charged on a piece of land worth £1,500 and the income is less than £50, Estate Duty is payable on *B's* death on the full £1,500.

If, however, the interest is less than the whole income, Estate Duty is payable on the "slice" of the property sufficient to produce the income to which the interest extended (F. A. 1894, s. 7 (7) (*b*); pp. 24–25, *supra*).

In the case of an annuity provided by the deceased and arising on his death, the value for Estate Duty may be calculated from the tables in the Succession Duty Act, taking the completed age of the annuitant at the death. The duty in such case may be paid by four equal yearly instalments, the first payable one year after death, interest on the unpaid duty from that date being charged (F. A. 1896, s. 16). It should be noted that the above tables are based on a 4 per cent. rate of interest and an average expectancy of life. They may not, therefore, be suitable for ascertaining the principal value in special cases.

Settlement Estate Duty.

For practical purposes Settlement Estate Duty is now payable only where a reversionary interest falls in to the estate of a testator dying on or before the 11th May, 1914, and the reversion, or the residuary estate of which the reversion forms part, was settled

by his will. The Settlement Estate Duty is payable on same value as the Estate Duty, less the amount of the Estate Duty. The form of account is *Form* C–2 (in duplicate). Interest is chargeable as in the case of Estate Duty. If it is required to correct the duty or apply for return of duty, *Form* D–2 should be used and should be accompanied by the original receipted account where it is for return of duty.

The stamped account is not required when Settlement Estate Duty is to be allowed against Estate Duty or repaid under proviso (*b*) to s. 14 of the F. A. 1914 (*see* pp. 268–273). No formal application is necessary to lead to the repayment of any excess duty in England; in Scotland *Form* 18 should be used. The duty repaid will, as a general rule, belong to the settled property, but where the settlement was made free of duty, and the Settlement Estate Duty was therefore paid out of some other fund, it is conceived that it should in strictness be restored to that fund. A separate application should be made on *Form* 38 (England) or 18A (Scotland) for the allowance of interest on the duty from the 15th August, 1914, and where there is doubt as to who is entitled to it the written consents of all interested parties should be furnished. In general the interest will belong to the deceased life tenant's estate, and should be accounted for as such (*see re Sutherland, Chaplin* v. *Leveson-Gower,* [1922] 2 Ch. 782). Where, however, there had been a previous death of a life tenant after the 15th August, 1914, on which Estate Duty was not payable, the interest would have to be rateably apportioned between each life tenant's estate. For instance, *A,* who died in 1910, by will settled property on his wife *B,* who dies in December, 1920, for life and then on his daughter, *C,* who dies in June, 1930. A further Estate Duty would not become payable on *B's* death, but it would on *C's* death,

and therefore interest on the Settlement Estate Duty allowed on the latter event would have to be apportioned rateably between *B's* and *C's* estates. (As to the method of calculating the allowance of Settlement Estate Duty and interest in the case of a settled fund subject to a continuing annuity, see *re Booth*, *Pleace* v. *Booth*, [1916] 1 Ch. 349.)

Commutations.

In cases where it is desirable to commute Estate Duty presumptively payable on settled property on the death of a life tenant (as to which *see* pp. 161–163), application should first be made to the Commissioners, setting forth the facts fully and stating how the property or the proceeds of sale, if sold, are being dealt with. In general, where property is being taken out of settlement, the duty to be commuted will be Succession Duty and not Estate Duty. Where, however, Estate Duty is to be commuted, *Form No.* 20 (England) or 19A (Scotland) in duplicate, which is forwarded by the Estate Duty Office when agreeing to commute, should be used. It should show the market value of the property at the time. If there has been a sale the gross proceeds of sale should be accounted for. If, however, the sale is of the reversionary interest expectant on the death of the life tenant, it is not sufficient to include the proceeds of the sale. The value of the property itself as in possession should be accounted for. The duty is calculated on the value in possession and is then discounted for the life of the life tenant. Thus, suppose the value in possession were £4,000 and the age of the life tenant sixty-two: the rate of duty would be 3 per cent. and the amount £120. The discounted value on a 4 per cent. basis of £120 expectantly payable on the death of a person aged sixty-two is £74 12s. 6d. and this is the sum payable by the accountable parties. It should be paid

within twenty-one days or a re-calculation may be necessary.

It will be noted that the rate of duty is ascertained by reference to the value of the property in possession. If, however, there is other property settled by the same instrument which will presumptively pass on the same death, the value of such property is aggregable with the property on which duty is being commuted and it may therefore increase the rate of duty. Where also there have been previous commutations of Estate Duty the values must be taken into account for aggregation purposes.

Where the life interest may determine on other contingencies than death the allowance in respect of the life interest is reduced, and in the case of a life tenant whose interest is for life or until re-marriage, the allowance is reduced as follows:—

Where the age of the life tenant exceeds—

20	and does not exceed		30,	allowance	reduced	by one-half
30	,,	,,	40	,,	,,	one-third
40	,,	,,	50	,,	,,	one-fourth
50	,,	,,	60	,,	,,	one-fifth
60	,,	,,	70	,,	,,	one-sixth
70				,,	,,	one-eighth.

Certificates (England).

The following statutory certificates may be obtained on application being made on the forms noted below. No fee is payable (F. A. 1894, s. 8 (15)):—

No. 25 (in duplicate).—For certificate under the F. A. 1894, s. 11 (1), discharging the property from Estate Duty. It is not issued in respect of property passing to the executor as such (including leaseholds) on which the Estate Duty is not a charge. The application should be made by the accountable persons or their solicitors,

or by persons authorised in writing by them, and should contain a description of the property sufficient to identify it in the Inland Revenue Affidavit or accounts. It was usually required for production to the purchaser when real estate had been sold, but for this purpose *Form No.* 26, *infra*, will now be the more appropriate application. The certificate is issued not only when the duty has been fully paid, but also when the Commissioners are satisfied that it will be paid. It discharges the property from the charge of Estate Duty, but the accountable parties are not necessarily released from their liability.

No. 26 (in duplicate).—For certificate under the L. P. A. 1925, s. 16 (7). This certificate is issued in similar circumstances and under similar conditions to that mentioned above, but it relates to all duties and not merely to Estate Duty, so that where Succession Duty is payable, and would constitute a charge on the property, that duty should be accounted for before application is made. If the property has been sold, and there is timber upon it, Estate Duty and Succession Duty should first be accounted for in respect of such timber. The certificate may be issued not only when the duties have been paid or commuted, but also when the Commissioners are satisfied that they will be paid or commuted. This certificate, on production to the Land Registrar, is a sufficient authority to enable him to cancel any Land Charge registered in respect of the property.

No. 29.—For certificate under the F. A. 1894, s. 9 (2). This certificate shows the amount of

Estate Duty paid in respect of property not passing to the executor as such. It also gives particulars of the property on which the duty has been paid and the debts and incumbrances allowed, and constitutes evidence that the amount of duty named therein is a first charge on the property specified. Any necessary repayment of duty, following the issue of this certificate, is to be made to the person producing the certificate (s. 9 (3)).

No. 30.—For certificate under the F. A. 1894, s. 11 (2). This is not limited to property on which the Estate Duty is a charge, and discharges both the applicant and the property specified in the form from any further claim for Estate Duty in connection with the death on which duty has been paid.

No. 31 (in duplicate).—For certificate under the Land Transfer Act, 1897 (s. 13 and Rules thereunder, and under the L. R. A. 1925, s. 73 (8) and (9), and Rule 192 thereunder). This is required in order that notice of any liability to duty on the land register may be cancelled, or that property may be registered without any such notice.

No. 32 (in duplicate).—For certificate to lead to payment out of funds in Court. Where an Order of Court directing payment, transfer or delivery of funds in Court, in respect of which duty is payable, does not direct payment of such duty, it must be stated in the payment schedule that such payment, etc., is subject to duty, and before acting on the Order the Accountant-General of the Supreme Court is to require the production of a certificate on *Form* 32 that the Commissioners of Inland Revenue do not object

to such funds being dealt with as directed by such Order. The office copy or duplicate Order should be produced before the certificate can be granted. In the case of periodical payments, the production of a receipt for duty suffices (Supreme Court Funds Rules, 1927, Rules 20 and 66).

No. 33 (in duplicate).—For certificate that funds in Court may be dealt with as directed, subject to payment of duty as shown in official requisition. Where the Court directs duty to be paid out of funds in Court such duty is assessed on the usual accounts being rendered, and on a requisition being made by the Estate Duty Office to the Accountant-General of the Supreme Court is paid by transfer at the Bank of England to the account of the Commissioners of Inland Revenue. The office copy or duplicate Order directing payment of duty is required when the assessment is made. A certificate on the form in question can then be given, on application, to the effect that subject to payment of the duty shown to be payable by the requisition, there is no objection to the fund being dealt with as directed by the Order (Supreme Court Funds Rules, 1927, Rules 52 and 66).

No. 34 (in duplicate).—Application for certificate for payment into Court under the Trustee Act, 1925 (Supreme Court Funds Rules, 1927, Rule 40).

Note as to Funds in Court.—Further regulations as to the provision to be made for Death Duties will be found in the Chancery of Lancaster Rules, Order L, 4 and 4A, and Regulations, dated 9th December, 1913, Nos. 41 and 42; County Court Rules, 1903, Order II; and as to Scotland, C. A. S., B, V, 1 and 2, and L, III, 1 and 2. *See also* pp. 375–378, *infra*.

Certificates (Scotland).

C*a* (in duplicate).—For certificate under the F. A. 1894, s. 9 (2). The effect is as noted above in connection with the English form No. 29.

C*c* (in duplicate).—For certificate under the F. A. 1894, s. 11 (1). The effect is as noted above in connection with the English form No. 25, but as the L. P. A. 1925 does not apply to Scotland there is no alternative certificate.

C*d* (in duplicate).—For certificate under the F. A. 1894, s. 11 (2). The effect is as noted above in connection with the English form No. 30.

Non-statutory Assurances.

In addition to the above, non-statutory assurances can be obtained on application by letter as follows:—

(1) A purchaser, who would not be entitled to apply on *Form No.* 25 or 26 or C*c*, can obtain an assurance as to any particular item of property he is interested in on giving a sufficient description of the property to enable it to be identified, and the name of the deceased and the date of his death.

(2) Where an estate comprises assets in the United States of America, a certified copy of the Inland Revenue Affidavit including such assets, and of any Corrective Affidavits is usually required. This is supplied by the Estate Duty Office on application by the executors or their solicitors, and on payment of a charge for copying and certifying—or the copy may be prepared by the accountable parties and sent to be certified.

(3) Where the deceased died domiciled in Northern Ireland or in a dominion or colony to which the

converse of the F. A. 1894, s. 20, applies (*see* pp. 273–276), possessed of assets in Great Britain, an assurance verifying payment of British Estate Duty on such assets is given on application. In the case of a dominion or colony, the assurance is usually given in the form of a certifid copy of the Inland Revenue Affidavit. Where the deceased died domiciled in the Irish Free State (*see* p. 275), possessed of assets situate in Great Britain, an assurance is automatically given on presentation of the English Inland Revenue Affidavit (accounting for the British Estate Duty on the British assets), to lead to an appropriate allowance of the British Estate Duty against the Estate Duty payable in the Irish Free State.

(4) Certain companies carrying on the business of mining, etc., in the Colonies, mainly in New South Wales, are required by the Colonial Government to see that the duty imposed by it is paid, or that it is not payable in consequence of the payment of British Estate Duty. Before the British grant can be registered, a certificate is required by the company as to this latter duty and this is given, where the head office of the company is in Great Britain, or the shares are registered on a register in Great Britain, on application stating the name of the deceased, the date of his death and the particulars of the holding as included in the Inland Revenue Affidavit.

(5) A duplicate receipt for the Estate Duty paid on an Inland Revenue Affidavit can be obtained for the purpose of record, if at the time of such payment to the Accountant-General a copy or draft of the Affidavit is presented. Upon

request, a certificate is then endorsed on the copy or draft, to the effect that an Affidavit, duly receipted for payment of the amount of Estate Duty and interest thereon, has been stamped.

If a Corrective Affidavit is pending, the application in some of the above cases may be suspended until the position is clear.

Where the estate does not exceed £100 and can, under statutory authority, be dealt with in the absence of a grant of representation, the form of application for any necessary certificate is No. 22 (England) or No. 20 (Scotland).

Grants de bonis non and Confirmations ad non executa.

Where, owing to the death of an administrator or the death intestate of a sole executor, or for any other reason, the original grant of representation becomes inoperative and a further English grant is required, application should be made in the first instance to the Estate Duty Office for a certificate that duty has been paid. It should be made by memorial, and instructions with a model form of memorial can be obtained from the Estate Duty Office. The memorial should be accompanied by an Inland Revenue Affidavit on *Form* A–5 duly completed. If the application is in order, the *Form* A–5 is returned with a certificate as to payment of duty indorsed, and is then ready for presentation to the Probate Registry in the ordinary course.

No special form of Inventory being designed for the case of Confirmations *ad non executa*, it is necessary to use *Form* D–1, suitably adapted.

Resealing.

An English grant of representation can be resealed in Scotland, or *vice versa*, only where the deceased was

domiciled in the country issuing the original grant (Confirmation of Executors (Scotland) Act, 1858, s. 14, and Supreme Court of Judicature (Consolidation) Act, 1925, s. 168). Where the deceased was not so domiciled, resealing between these two countries is not permissible, and, to obtain title to the property situate in the other country, a separate grant must be taken out there (except where there is a colonial or Northern Irish grant which can be resealed).

It may be noted that on the death of a holder of any Government stock, resealing as between England and Scotland is unnecessary as regards such stock (F. (No. 2) A. 1915, s. 48, and F. A. 1916, s. 67). Northern Ireland is expressly excluded from this arrangement (s. 169 (4) of the Supreme Court of Judicature (Consolidation) Act, 1925, and Article 3 (5) of the Resealing Order of 1923, referred to below).

Grants of representation issued in Northern Ireland can be resealed in England only on the terms of s. 169 of the Supreme Court of Judicature (Consolidation) Act, 1925, as amended by s. 10 of the Administration of Justice Act, 1928, and in Scotland on the terms of s. 14 of the Confirmation of Executors (Scotland) Act, 1858, as adapted (in pursuance of ss. 28 and 69 of the Government of Ireland Act, 1920) by the Government of Ireland (Resealing of Probates, &c.) Order, 1923 (S. R. & O., 1923, No. 613). Grants issued in the Irish Free State cannot be resealed. Other grants can be resealed only on the terms of the Colonial Probates Act, 1892, extended by the Foreign Jurisdiction Act, 1913. In all these cases it is an essential preliminary to the reseal that the British Estate Duty shall be paid, prior to the reseal, in the same manner as if an original grant were being applied for.

Where a person dying domiciled outside Great Britain leaves assets both in England and in Scotland, the

British Estate Duty in respect of the assets in both countries is payable on the Inland Revenue Affidavit or Inventory, as the case may be, which is first presented (*see* F. A. 1894, s. 6 (2)). If the payment has been made in England, the Scottish Inventory should be sent by post to the Controller, Estate Duty Office, Somerset House, London, W.C.2, with a request that it may be impressed with a duty-paid stamp. If the stamped Inland Revenue Affidavit has not yet been lodged at the Probate Registry, it should be forwarded at the same time for reference. Similarly, if the British duty has been paid in Scotland, the English Inland Revenue Affidavit should be sent to the Registrar, Estate Duty Office, Edinburgh. This practice applies both where a colonial or Northern Irish grant is being resealed and where original English and Scottish grants are being obtained.

Payment of Duty.

Payment of the duty when assessed may be made in England personally at the Accountant-General's Department, Somerset House, or by post to the Accountant-General by means of a cheque drawn in favour of the "Commissioners of Inland Revenue or Bearer," crossed "Bank of England—Inland Revenue," or, where the duty does not exceed £40, by Money Order, free of commission, similarly drawn and crossed. In Scotland payment may be made personally to the Cashier in the Office of the Comptroller, 10 Waterloo Place, Edinburgh, or by post to "The Comptroller, Inland Revenue (Cashier)," at that address, by cheque made payable to the "Commissioners of Inland Revenue" and crossed "Inland Revenue Account," or by Money Order (drawn upon London), free of commission, similarly drawn and crossed.

It may also be made by transfer of Government securities issued in connection with the Great War (F. A.

1917, s. 34, as amended by F. A. 1918, s. 42). In accordance with regulations by the Treasury (Death Duties, etc. (Payment in Securities) Regulations for 1918, 1919 and 1921), the Commissioners of Inland Revenue are empowered to accept the following securities and to arrange with the applicant the procedure to be followed in each particular case for their transfer:—

4 % War Loan, 1929–42, Stock and Bonds.
5 % ,, ,, 1929–47 ,, ,,
4 % Funding Loan, 1960–1990 ,, ,,
4 % Victory Bonds.

These securities can only be accepted if it is shown to the satisfaction of the Commissioners of Inland Revenue that the stock or bonds formed part of the estate passing on the death of the deceased, or of the assets of a partnership of which he was a member, for at least six months preceding the death, or continuously from the date of the original issue.

In addition, it is provided as to the Funding Loan and Victory Bonds that where they formed part of the assets of a partnership they may only be tendered to an extent proportional to the share of the deceased in the capital of the partnership (as determined for the purposes of the death duties), and must have been held by the partnership for a period of not less than six months preceding the death or continuously from the date of the original issue.

Application should be made to the Estate Duty Office, specifying (1) the amount and denomination of the securities tendered, including the distinguishing numbers of the certificates or bonds; (2) whether they are in the form of bearer bonds or registered stock or bonds, and in the latter case whether transferable by deed or not; (3) whether the securities had been held for the qualifying period, as mentioned above; (4) whether they are subject to any lien or charge; and (5) whether

they are under the applicant's control and, if not, in whose custody they are.

It should be noted that the option of paying duty in this way falls to be exercised once and for all at the time of payment of the duty on the Inland Revenue Affidavit, Inventory or account, and the question of payment cannot be reopened in the event of the duty being paid in cash in the first instance.

The value (95 per cent. in the case of the 5 per cent. War Loan, 80 per cent. in the case of Funding Loan and 100 per cent. in other cases) is calculated at the price of issue or such other price as was specified for this purpose at the time of issue, with the addition of interest accrued to the date of transfer, but deducting any interest receivable by the transferor after that date. The value is not to exceed the amount payable, but in the case of Victory Bonds arrangements are made by the Estate Duty Office for Bank of England or Post Office Bonds of smaller denomination to be given in exchange, regard being had to the fact that the lowest denominations issued by the Bank and Post Office are £50 and £5 respectively.

Bonds to bearer must have all undue coupons attached.

The securities are accepted subject to any necessary verification and, where the securities were in deceased's name, and it is desired to use them in payment of Estate Duty on the Inland Revenue Affidavit or Inventory, to an undertaking by the executors to take all necessary steps to complete the transfer immediately after the grant of representation or Confirmation has been obtained. Credit is given against the Estate Duty and interest for the value of the stock or bonds. At the present time the transfer of Victory Bonds only is profitable. Full instructions as to procedure for transfer of these Bonds are given by the Estate Duty

Office in *Form* Con. 55. As to the surrender of stock on a Savings Bank Register, *see* the Post Office Register (Trustee Savings Banks) Regulations, 1930, Clause 15.

If Victory Bonds belonging to one fund are used for payment of the duty on another fund, the latter fund is liable to repay the full amount for which the Bonds were accepted, and not merely their market value (*re Ticehurst's Settlement, Wyatt* v. *Ticehurst*, [1930] W. N. 166).

The fixed duties of £1 10s. and £2 10s. are payable by means of an adhesive stamp, which should be affixed to the first page of the Inland Revenue Affidavit.

Miscellaneous.

The rate of interest on duty, where such interest accrues on and after 31st July, 1919, is 4 per cent. (F. A. 1919, s. 30). The previous rate was 3 per cent. (F. A. 1896, s. 18 (1)), so that if duty became payable before 31st July, 1919, and remained unpaid, interest would be charged at 3 per cent. up to then and thenceforward at 4 per cent. Similarly where discount is allowable. Interest is payable without deduction for Income Tax.

Instructions as to forms, rates of duty, etc., are contained in the official *Form* A–2 (England) or N (Scotland).

Affidavits, inventories and accounts may be sent by post or, if desired, may be left by hand at the Estate Duty Office. They are then examined and instructions sent by post as to the amount of duty payable and the mode of payment. Personal attendance is not necessary, but in suitable cases an appointment can be arranged.

The English Estate Duty forms can be obtained from the Controller, Estate Duty Office, Somerset House, London, W.C.2, on personal application or by letter. *Forms* A–2, A–4, A–6, A–7, B–2, B–4, C–1, C–3,

D–1, D–2 and No. 25 may also be obtained at head Post Offices outside the Metropolitan Postal District and at the Throgmorton Avenue Post Office, London Wall, E.C.2, on personal application.

The Scottish forms can be obtained from the Registrar, Estate Duty Office, Edinburgh, on personal application or by letter. *Forms* A–1, A–2, A–4, A–5, B–1, 16, C–1, C–3, D–1, D–2, D–4, D–5, *Cc* and N may also be obtained at authorised Stamp and Post Offices in the country.

PART II.

LEGACY DUTY.

This duty is a tax upon *personal* property under wills or intestacies.

It was first imposed in 1780 (20 Geo. III, c. 28), but its scope has since been extended and it is now mainly regulated by the L. D. A. 1796 (36 Geo. III, c. 52).

The rates of duty were formerly graduated from 1 per cent. for lineal issue to 10 per cent. for strangers in blood. The F. A. 1894 practically abolished the 1 per cent. duty (F. A. 1894, s. 1, 1st Schedule, 5th par.). Then came the F. A. 1910, which, in the case of considerable estates, re-imposed the 1 per cent. duty and also charged it upon the husband or wife of the testator or intestate, raised the 3 per cent. rate for brothers and sisters and their descendants to 5 per cent., and charged all other legatees at 10 per cent. (F. A. 1910, s. 58).

Legacy Duty differs from Estate Duty in the fact that the latter duty falls upon the property passing on a death without regard to the persons who benefit, but Legacy Duty is imposed upon the actual benefit taken by the legatees at a rate depending upon the relationship borne by them to the testator or intestate. Legacy Duty, moreover, is payable only on personal property, excluding leaseholds (except under the will of a testator dying before the 1st July, 1888, when the Customs and Inland Revenue Act, 1888, came into force).

It differs from Succession Duty in that (except in the case of *donationes mortis causa*) it is only payable under

wills or intestacies and not under settlements or other dispositions. Formerly, too, where a testator died after 1st July, 1888, the rates of Succession Duty on property which had not borne Probate Duty were higher than those of Legacy Duty, but now where Estate Duty is paid the rates are the same.

Another peculiarity of Legacy Duty is that it is dependent on the domicile of the testator. The rule of law is that, for the purpose of succession and enjoyment, pure personal estate, wherever it may in fact be, follows the domicile of the owner (*Blackwood* v. *The Queen* (1882), 8 A. C. 82 P. C.), and Legacy Duty is therefore only payable on the personal estate of persons domiciled in Great Britain. If a testator is domiciled abroad, no Legacy Duty is payable in this country even on his personal estate locally situate here.

The duty was formerly payable on the proceeds of real estate directed to be sold and legacies and annuities charged by will upon real estate, but only where the testator died before 1st July, 1888. Since that date Succession Duty is payable instead. Instances of Legacy Duty payable in these cases are not now of frequent occurrence, but they still arise where duty becomes payable on the death of a tenant for life of the proceeds of real property given by the will of a testator dying before 1st July, 1888.

The text of the Acts relating to Legacy Duty is given in the Appendix, commencing at p. 540.

The duty may be conveniently considered under similar heads to those adopted in the case of Estate Duty : viz.—

1. The Property upon which it is Payable.
2. The Rates and Amount of Duty Payable.
3. The Persons Accountable and Incidence of the Duty.
4. Exemptions.
5. Practice.

CHAPTER VI.

THE PROPERTY UPON WHICH LEGACY DUTY IS PAYABLE.

Legacy Duty is payable upon—

(1) *Donationes mortis causa* (Revenue Act, 1845, s. 4).

(2) Every gift by any will or testamentary instrument of any person which by virtue of such will or instrument is payable out of the *personal or moveable estate* or effects of such person, or of which he had power to dispose, whether such gift shall be by way of annuity or in any other form (*ibid.*); and also the clear residue of the personal estate of any person, whether he dies leaving a will or dies intestate (Stamp Act, 1815, s. 2 and Schedule). This covers the ordinary personal property of which a person may die possessed, *i.e.*, his money, stocks, shares, securities for moneys, business assets, furniture and moveable property generally. Personal property ordinarily includes leasehold property, but for Legacy Duty and Succession Duty purposes leasehold property is treated as real estate and by the S. D. A. 1853, ss. 1 and 19, was made liable to Succession Duty.

Legacy Duty is also payable on real estate, including leaseholds, directed to be sold by the will of a person dying before 1st July, 1888 (Stamp Act, 1815, s. 2 and Schedule, amended by Customs and Inland Revenue Act, 1888,

s. 21 (2)). For example: *A*, who died in 1887, gave real estate to *B* for life and on his death upon trust to sell, and the proceeds to his nephew *C*. *B* died in 1930. Legacy Duty became payable on the real estate directed to be sold. If, however, *A* the testator had died in 1890, Succession Duty and not Legacy Duty would have been payable. The distinction is not ordinarily important, as the rates of Legacy Duty and Succession Duty in respect of property which has borne Estate Duty are the same, but it may become important if a beneficiary dies before his legacy is payable.

Leasehold property given by will on trust for sale is still chargeable with Legacy Duty, not Succession Duty, in all cases.

Money or personal estate directed by will to be laid out in the purchase of real estate is liable to Legacy Duty as personal estate so long as it has not actually been applied in such purchase, except that, if the property is given to different persons in succession, each person pays Legacy Duty separately; and if before such actual application any person becomes entitled to "an estate of inheritance in possession in the real estate to be purchased therewith," duty is to be charged as if he were a person absolutely entitled to personalty (L. D. A. 1796, s. 19). This provision includes the case of a life tenant who had become absolutely entitled (*Kenlis* v. *Hodgson,* [1895] 2 Ch. 458), and the case of an heir of entail who had disentailed by private arrangement, the Court holding that the interest of an heir of entail was "an estate of inheritance in possession" quite apart from the disentailing proceedings (*Macfarlane* v. *Lord*

Advocate, [1894] A. C. 291). It has been held, further, that where a fund, directed by an old will to be invested in land but not in fact so invested, devolved, under the intestacy of a person who had become entitled absolutely, to her heir-at-law (not to her next-of-kin), the heir was chargeable with Legacy Duty (not Succession Duty) under her intestacy (*re De Lancey* (1870), L. R. 5 Ex. 102; *De Lancey* v. *The Queen* (1872), L. R. 7 Ex. 140). If real estate is actually purchased before the claim arises, Succession Duty (and not Legacy Duty) is chargeable.

(3) Real estate, which owing to certain rules of law has become impressed at the death of the deceased with the character of personal estate. Of such a kind is real estate belonging to a partnership which on the death of a partner passes as personal estate (*Forbes* v. *Steven* (1870), L. R. 10 Eq. 178; *Stokes* v. *Ducroz* (1890), 38 W. R. 535).

Donationes mortis causa (as to which *see* pp. 32–34) are expressly made liable to Legacy Duty (Revenue Act, 1845, s. 4) and are the only instance of Legacy Duty being payable otherwise than under a will or intestacy.

If a testator releases a recoverable debt due to him, Legacy Duty is payable on the debt by the debtor, as practically the release amounts to a gift by the testator to the debtor of the amount owed. If one of two joint debtors has predeceased the testator, the release is taxable as a legacy to the survivor (*A.-G.* v. *Holbrook* (1823), 3 Y. & J. 114). Interest on the duty is regarded as running from a year after the death, as in the case of an ordinary legacy.

A direction by a testator to pay the debts of another person is a gift to such person of the amounts owing and

he is accordingly liable to pay duty. But if the debtor is absolutely insolvent, the direction is regarded as a legacy to the creditors, and they are liable to Legacy Duty (*Foster* v. *Ley* (1835), 2 Bing. N. C. 269). Where the debts bear interest, and the direction extends to the payment of the interest as well as the principal, interest down to the date of payment, or the date of the account, is part of the legacy.

A direction in a will to pay the testator's debts does not, of course, create any liability to Legacy Duty, for in order to constitute a legacy it is essential that there should be an act of bounty on the part of the testator. This is so even if the recovery of the debts is barred by lapse of time, for it is open to the testator or his executor to pay them at any time (*Williamson* v. *Naylor* (1834), 3 Y. & C. Ex. 208). But where the debts have been absolutely released or extinguished (as, for instance, where the testator had become bankrupt and obtained his certificate of discharge) Legacy Duty is payable (*Turner* v. *Martin* (1857), 7 De G. M. & G. 429).

Where a legacy fails (as, for instance, if the legatee dies before the testator or if the legatee disclaims or refuses to accept the legacy), Legacy Duty is not, of course, payable on the legacy as such, but as it presumably would fall into residue it would bear Legacy Duty as forming a part thereof. The same principle applies where a legatee does not require interest to which he is entitled.

A legacy is only liable to duty under the will of the testator out of whose property it takes effect, so that where a testator bequeaths a sum to a legatee and directs that if the latter predeceases the testator the legacy shall be paid to the legatee's next-of-kin or to his executors or administrators, or to the persons who would be entitled if the legatee had died immediately after him, Legacy Duty is only payable under the testator's will, although

in the last two instances the legacy in effect becomes part of the legatee's estate. The rule is that a legacy cannot be given to a person who is dead at the testator's death and the legacy is therefore treated as a direct benefit by the original testator to the legatee's next-of-kin or to the beneficiaries entitled under his will, as the case may be (*Lord Advocate* v. *Bogie*, [1894] A. C. 83). Where, however, the legacy is given to a person for life and then to his executors or administrators, Legacy Duty is payable, for the above rule does not apply, as the legatee was actually living at the death of the testator and the bequest in fact gives him an absolute interest in the legacy.

The case may, however, come under s. 33 of the Wills Act, 1837, which provides that legacies to children or other issue of the testator shall not lapse by the legatee's death in the testator's lifetime leaving issue, but shall take effect as if the legatee had died immediately after the testator. The legacy is thus made part of the legatee's personal estate and is liable as such to his debts. Legacy Duty may therefore be payable both under the will of the original testator and also under the will or intestacy of the deceased legatee (*re Scott*, [1901] 1 K. B. 228).

A direction in a will that a gift is to be free of Estate Duty or Succession Duty constitutes a legacy where the duty would otherwise be a charge on the gift itself.

Similarly, a direction that an annuity is to be free of Income Tax confers a further benefit on the annuitant which is liable to Legacy Duty, and, unless an arrangement is come to with the Commissioners of Inland Revenue to compound the duty by payment on the value for the life of the annuitant at an agreed fixed rate of tax, Legacy Duty is payable from time to time on the sums actually applied in payment of the tax (L. D. A. 1796, s. 11).

Where a testator has in his lifetime covenanted to leave a certain share of his residuary estate to a person, Legacy Duty is none the less payable on his death (*Jervis* v. *Wolferstan* (1874), L. R. 18 Eq. 18). It cannot be treated as a mere debt due from the estate, for the fact that he leaves a residuary estate out of which the covenant can be satisfied is to be regarded as an act of bounty, as he may if he chooses so dispose of his estate in his lifetime that there is no residue. It is otherwise where the covenant is to leave a specific or definite sum. In such a case a debt is created, as the covenantor binds himself to leave sufficient assets to satisfy the covenant (*Eyre* v. *Monro* (1857), 3 K. & J. 305). Succession Duty may, however, be payable.

Estates *pur autre vie* are liable to Legacy Duty as personal estate (L. D. A. 1796, s. 20). An estate *pur autre vie* arises where real estate is held by one person during the life of another person. It was formerly thought that where such an estate, on the death of the owner, vested in his heir or devisee as special occupant it became liable to Succession Duty and not Legacy Duty. Now, however, devolution by special occupancy has been abolished by the A. E. A. 1925, s. 45 (1) (*a*), and such estates in all cases devolve upon the personal representative and are liable to Legacy Duty (*cf. Chatfield* v. *Berchtoldt* (1872), L. R. 7 Ch. App. 192).

Where the testator bequeaths the next presentation to a living, Legacy Duty is payable, such property being a chattel interest and forming part of the testator's personal estate. An advowson is real estate and is liable to Succession Duty (if and when sold).

Conditional Legacies.

Legacy Duty is still payable, even though a condition is attached to the legacy (*A.-G.* v. *Sharpe* (1890),

7 T. L. R. 558, and *re Thorley, Thorley* v. *Massam*, [1891] 2 Ch. 613), except to the extent that the fulfilment of the condition is a pecuniary benefit to the estate (*Sweeting* v. *Sweeting* (1853), 1 Drew. 331). If *A* bequeaths £100 to *B* on condition that he pays £20 to *C*, Legacy Duty is presumably payable on £80 by *B* and on £20 by *C*. A gift to a creditor of an amount in excess of the debt due to him with a direction to the creditor to release such debt would render the creditor liable to Legacy Duty on such excess.

A gift to a person with a legal obligation to maintain other persons imposes a liability to Legacy Duty on the benefits to which the latter are entitled (*re Harris* (1852), 7 Ex. 344). Thus, where a testator gives his residuary estate to his widow with the obligation of maintaining his children, Legacy Duty would be payable on the benefits received by the children if the limits of value contemplated by the F. A. 1910, s. 58 (2), were exceeded.

A legacy or annuity to trustees for the maintenance of certain pet animals of the testator is treated as held in trust for the animals to the extent of the cost of their maintenance—and so far, is not liable to Legacy Duty—and in trust for the residuary legatees to the extent of what remains beyond the cost of maintenance (*re Dean* (1889), 41 Ch. D. 552). But where the gift is clearly to the person beneficially, subject to the condition of maintaining the animals, or where the knowledge that the person would maintain the animals was the motive of the gift, Legacy Duty is payable on the legacy or annuity as an absolute gift to such person without regard to the maintenance of the animals. A mere provision for the maintenance of an animal so far as the legacy was so applied would not be liable to Legacy Duty.

Formerly a bequest by a testator domiciled in England for the saying of masses for the repose of the

dead was treated as void, and therefore not liable to Legacy Duty and not deductible against the residuary estate. It was, however, decided by the House of Lords in the case of *Bourne* v. *Keane,* [1919] A. C. 815, that such bequests are legal. Legacy Duty is therefore chargeable as in the case of any other legacy, but if the bequest creates a perpetuity its legality will still be dependent upon whether it is to be regarded as charitable. If it is, it will be chargeable with Legacy Duty. In Ireland, charitable legacies are exempt from Legacy Duty, and it has been decided there that a bequest for masses in perpetuity is a good charitable gift (*see* p. 390).

Legacies to Executors.

A legacy given to an executor for his trouble in acting is liable to Legacy Duty, as the rule is that an executor cannot make any charge to recompense himself for his trouble. So that a gift of this kind, although it may be inadequate to recompense the executor, has to be regarded as an act of bounty on the part of the testator (*re Pooley* (1888), 40 Ch. D. 1).

In strictness, duty is also payable under the same principle where there is a direction in the will authorising the executor to charge professionally for what he does in connection with the estate (*re Thorley, Thorley* v. *Massam*, [1891] 2 Ch. 613). For example: where there is such a power to charge, an executor in business as an estate agent or auctioneer who acts as a valuer of the deceased's property or puts it up to auction is liable to Legacy Duty on the amount of his fees. This is so even though the executor would be entitled to employ, at the expense of the estate, professional assistance to do the work actually performed by himself. The same rule applies to a solicitor executor who acts in winding up an estate (*re White, Pennell* v. *Franklin,* [1898] 2 Ch. 217;

and *re Brown*, *Wace* v. *Smith*, [1918] W. N. 118). The liability to duty does not, of course, extend to payments out of pocket. In practice, however, it is understood that claims for duty in these cases are not now pressed except where a fixed annual sum is given to the trustee for collecting and distributing the rents and income or otherwise managing a trust estate. Legacy Duty is then payable from time to time on the sums so received, and accounts should be rendered periodically showing the amounts received to date.

Powers of Appointment.

The charge of Legacy Duty, in the case of powers of appointment, is governed by the L. D. A. 1796, s. 18, and the Revenue Act, 1845, s. 4.

Where property is bequeathed by will, with a limited power of appointment in favour of persons who are named or described, Legacy Duty is payable under that will in the same manner as if the property had in the first place been given successively to the beneficiaries who take previous or subject to the appointment and those who take under or in default of such appointment. The rate depends on their relationship to the person creating the power. The result is the same whether the power is exercised by will (*Pickard* v. *A.-G.* (1840), 6 M. & W. 348) or by deed (*Sweeting* v. *Sweeting* (1853), 1 Drew. 331). No Legacy Duty or Succession Duty is payable under the instrument by which the power is exercised, and the relationship of the appointees to the appointor is immaterial. If a limited power is created by deed but exercised by will, no Legacy Duty is payable under the will, but Succession Duty is payable *primâ facie* under the settlement.

Where a beneficiary takes a limited interest in property and is given also a general or absolute power of appointment (but is not entitled to the property in

default of appointment), Legacy Duty is levied in the first instance on the limited interest only. If the power is not exercised, duty will be payable by the persons taking in default of appointment, in the same manner as if the power had not been conferred. If it is exercised, further duty becomes payable under the original will, in the same manner as if the property had been given to the donee absolutely, with an allowance for the duty already paid on the limited interest. This additional duty is chargeable whether the power is exercised by deed or will. If it is exercised by will, Legacy Duty is payable *also* under the latter will, according to the relationship of the appointee to the appointor (*re Cholmondeley* (1832), 1 Cr. & M. 149; *Drake* v. *A.-G.* (1843), 10 Cl. & F. 257). For example, *A* by will gives £1,000 on trust for *B* for life, with remainder as *B* by deed or will appoints, and in default for *C*. Legacy Duty is paid on *B's* life interest. (1) *B* appoints the property by deed to himself (or to *D*) absolutely. Legacy Duty is payable on the capital under *A's* will, with an allowance for the duty already paid. (2) *B* dies without exercising the power. Legacy Duty is payable by *C* according to his relationship to *A*. (3) B dies, having appointed the property by his will to *D*. Legacy Duty is payable as in case (1) and also under *B's* will, according to *D's* relationship to *B*. (4) *B* dies, having appointed the property by his will to *C*. Both duties are payable as in case (3).

Even if the appointment takes the form of a residuary gift, *C* cannot disclaim his benefit under *B's* will and elect to take, as in default of appointment, under the will of *A* (*A.-G.* v. *Brackenbury* (1863), 1 H. & C. 782). But a power is not necessarily exercised by a mere expression of desire by the donee of the power that the property shall go as in default of appointment (*H.M. Advocate* v. *Routledge's Trustees,* [1907] S. C. 327).

If a general power of appointment is created by deed and exercised by will, Legacy Duty is payable under the will.

If the power, whether created by deed or will, is exercised by deed, the appointment is a *disposition* for the purpose of Succession Duty, and, if it operates with reference to death, the latter duty will be chargeable (as well as the additional Legacy Duty under the old title, if the power was conferred by a will).

Property given by will, with a general power of appointment, in such manner that it will belong in default of appointment to the donee of the power, is taxable as an absolute gift in the first place.

A power may be general or absolute within the meaning of the Act, notwithstanding that certain designated persons are expressly excluded by the donor of the power from the benefit of any appointment (*Drake* v. *A.-G., supra*).

Secret and Undisclosed Trusts.

In considering the liability to Legacy Duty, only the terms of the will should as a general rule be regarded, but if a legacy is given to *A* and a secret trust was constituted between him and the testator for the benefit of other persons, Legacy Duty, or in the alternative Succession Duty (*see* S. D. A. 1853, s. 8), is considered to be payable at a rate depending upon the relationship (if any) of the beneficiaries of the secret trust to the testator. In *Cullen* v. *A.-G.* (*I.*) (1866), L. R. 1 E. & I. App. 190, it was decided that the will alone was to be regarded and that Legacy Duty was payable as if the secret trust did not exist, but as that case was decided upon the Irish Stamp Acts, it is considered that the decision is distinguishable; compare *re Maddock, Llewelyn* v. *Washington,* [1902] 2 Ch. 220, and *re Gardner, Huey* v. *Cunnington,* [1920] 2 Ch. 523.

Duty is also payable under an undisclosed trust which arises where the will shows that the testator intends the legatee to hold the property upon trust, but does not expressly or by reference declare the terms of the trust. In such cases oral evidence is admissible to prove the trust, provided it was communicated prior to, or simultaneously with, the execution of the will (*see re Blackwell, Blackwell* v. *Blackwell,* [1929] A. C. 318, and Jarman on Wills, 7th edition, p. 884). The English doctrine of secret trusts has never been admitted in Scots law (*Shaw's Trustees* v. *Greenock Medical Aid Society,* [1930] S. L. T. 39).

Cumulation of Duty.

Unlike Succession Duty, Legacy Duty is payable on each devolution of a legacy or residue although the beneficiary may not have lived to enjoy the property (*A.-G.* v. *Malkin* (1845), 2 Phil. 64; *A.-G. (I.)* v. *Maxwell* (1860), 10 Ir. C. L. R. 262; and *A.-G.* v. *Cleave* (1875), 31 L. T. 86). Thus, to take an extreme case, *A* by will gives £5,000 to *B* for life and on his death to *C* absolutely. *C* predeceases *B,* having bequeathed the fund to *D*. *D* also predeceases *B,* without leaving a will, and the fund passes to *E,* his next-of-kin. Legacy Duty is payable on each devolution (unless it comes within one or other of the exemptions from Legacy Duty). *A's* trustees after paying the Estate Duty and Legacy Duty which arose on the death of *B* under *A's* will can safely hand over the balance of the fund to the executors of *C,* who are liable to account for the duties payable under his will. *C's* executors then hand over the balance to the duly constituted personal representatives of *D,* who in their turn are liable to account for the Legacy Duty under his intestacy. If, however, *A's* trustees handed the fund to *E* direct they would

presumably render themselves liable, as executors *de son tort* of the estates of *C* and *D*, for the Legacy Duty payable on each devolution (*cf. re Philbrick's Settlement* (1865), 34 L. J. Ch. 368, and *re Hoskin's Trusts* (1877), 6 Ch. D. 281).

Compromises.

Where a legacy or residue is satisfied otherwise than by payment of money or appropriation of specific effects or is released or compounded for less than the value thereof, then the duty is to be paid on the value of the property taken in satisfaction or in consideration of the release or composition for the same (L. D. A. 1796, s. 23).

Subject to this exception, the general rule is that Legacy Duty is payable in accordance with the strict legal rights of the beneficiaries as evidenced by the grant of representation or Confirmation which is finally allowed to stand. The charge of duty is not affected by the manner in which such beneficiaries may choose to dispose of the property. If the Court declares for an intestacy, Legacy Duty is payable by the next-of-kin at the rate appropriate to their relationship, without regard to any payment which they may have made to "buy off" the person setting up a will (*The Queen* v. *Commissioners of Stamps and Taxes* (*Stracey's Case*) (1844), 6 Q. B. 657). Similarly, if there are competing wills or codicils, and the dispute is compromised on terms that a particular will or codicil be proved, and the other or others withdrawn on payment of an agreed sum, Legacy Duty is payable in accordance with the document admitted to Probate, without regard to the payment (*Higgins* v. *The King* (1930), 9 A. T. C. 158). The persons who are "bought off" in these cases do not take any "legacy" or "residue" within the meaning of s. 23, which therefore does not apply.

The ordinary types of compromise, to which s. 23 relates, are (1) between pecuniary or specific legatees

and residuary legatees, under a will of doubtful construction, (2) between residuary or other legatees (under a will which has been admitted to Probate) and the next-of-kin (*Lord Advocate* v. *Murray (Freckleton's Judicial Factor)* (1894), 21 Rett. 743, also reported *sub nom. Macrae* v. *Lord Advocate,* 31 S. L. R. 637; *Lord Advocate* v. *Watherston's Trustees* (1901), 3 Fra. 627), and (3) between the next-of-kin themselves under a complete or partial intestacy. It is immaterial whether the compromise is sanctioned by the Court or not, provided there is no reason to suspect its *bona fides.* If a legacy is compounded for and no arrangement is made as to the duty thereon, such duty will be a deduction against the sum payable to the legatee (*Fischer* v. *Seafield* (1825), 4 Shaw 194).

Foreign Element.

The scope of Legacy Duty (in relation to moveable property) is governed by the principle *mobilia sequuntur personam.* The liability depends entirely on the domicile of the testator or intestate or donor of a *donatio mortis causa,* without reference to the situation of the property (*Thomson* v. *Adv.-Gen.* (1845), 12 Cl. & F. 1). Duty is therefore payable on the moveable property abroad of a person dying domiciled in Great Britain, but not on the British property of a person dying domiciled abroad.

If the property is settled by a British will, the liability to Legacy Duty on the death of a life tenant will not be affected by the fact that the trustees and beneficiaries may then be resident abroad. The charging provisions take no cognisance of the *forum* for the administration of the trusts. On the other hand, if the trusts of a foreigner's will have become subject to a British *forum* of administration, Succession Duty is payable here on a life tenant's death. If a British

testator exercises by his will a general power of appointment conferred by a non-British will or settlement, Legacy Duty is chargeable. On the other hand, if a non-British testator exercises by his will a general power of appointment conferred by a British will or settlement, Succession Duty is chargeable.

The only immoveable property which ordinarily becomes liable to Legacy Duty is leasehold property on trust for sale. As immoveable property is governed by the *lex situs*, not by the law of the owner's domicile, leasehold property in this country, given by the will of a non-British testator on trust for sale, is chargeable with Legacy Duty on his death (*see Chatfield* v. *Berchtoldt* (1872), L. R. 7 Ch. App. 192). Apart from the trust for sale, it would be chargeable with Succession Duty. On the other hand, no Legacy Duty is payable on the death of a British testator in respect of his leasehold property outside Great Britain, though if there is a trust for sale it may be liable to Succession Duty on the death of a life tenant.

See as to domicile, pp. 388–389; as to relief from double taxation in British-Irish cases, p. 441; and as to Succession Duty in the circumstances referred to above, pp. 433–439.

CHAPTER VII.

RATES AND AMOUNT OF LEGACY DUTY.

THE rates of Legacy Duty now payable (under the Stamp Act, 1815, s. 2 and Schedule, as amended by the F. A. 1910, s. 58) are as follows:—

Relationship of Legatee to Testator or Intestate.	Rate per cent.	
	Where the Testator or Intestate dies on or after the 30th April, 1909.	Where the Testator or Intestate died before the 30th April, 1909.
Husband or wife	1	—
Lineal issue and lineal ancestors	1	1 (but usually covered by exemptions)
Brothers and sisters and their descendants	5	3
Brothers and sisters of the father or mother and their descendants	10	5
Brothers and sisters of the grandfather or grandmother and their descendants	10	6
Persons of more remote consanguinity and strangers in blood	10	10

Where the free estate does not exceed £1,000, it is not liable to Legacy Duty or Succession Duty (F. A. 1894, s. 16 (3); p. 381).

Where the free estate slightly exceeds £1,000, the amount of the Legacy Duty and Succession Duty is limited to the amount of the excess (F. A. 1914, s. 13 (2); p. 382).

There are extensive exemptions from the 1 per cent. rates (pp. 390–393).

The old rates are still payable where the testator or intestate died before the 30th April, 1909, even though the claim for duty arises after that date. For example, if a testator, dying in 1908, bequeathed a fund to his wife for life and then to his nephew, and the wife dies in 1930, the nephew is chargeable with Legacy Duty at 3 per cent. and not at 5 per cent. The term "testator" includes a person making a donation *mortis causa* (F. A. 1910, s. 58 (4)).

Relationship.

A person who has married a wife or husband of nearer consanguinity than himself or herself to the testator or intestate is chargeable with Legacy Duty (or Succession Duty) at the rate applicable to such wife or husband (S. D. A. 1853, s. 11). For example: (1) *A*, leaving upwards of £15,000, gives a legacy exceeding £1,000 to his stepmother *B*. Legacy Duty is payable at 1 per cent. as on a legacy to *B's* husband (*A's* father). (2) *C* gives a legacy to *D*, a stranger in blood who has married *C's* niece. Legacy Duty is payable at 5 per cent., not at 10 per cent. (3) *E's* only relatives are a daughter *F* and a nephew *G*; *G* and *F* marry; *F* dies without issue in *E's* lifetime; *E* then dies intestate. *G* is entitled to his estate as nephew, not as son-in-law, but the rate of Legacy Duty is 1 per cent., not 5 per cent.

The marriage must take place before the duty becomes *chargeable*. A stranger does not, by marrying a relative of the testator after an immediate claim for duty has arisen, but before payment, obtain the benefit of a lower rate. But if a legacy is given to *H* (a brother) for life, with remainder to *J* (a stranger), and *J* marries a relative of the testator during the life of *H*, the lower rate will apply, for *J's* benefit is not *chargeable* until *H's* death. If, however, *H* and *J* were originally chargeable at the same rate and Legacy Duty was paid on the capital, there is no provision for any adjustment or repayment on account of *J's* subsequent marriage.

It is not necessary that the marriage shall be subsisting when the claim for duty arises. It is sufficient that the legatee has at any previous time been married to a spouse of nearer consanguinity. The prospective benefit of the lower rate is not then lost by the death of the spouse or by divorce (*cf. Bullmore* v. *Wynter* (1883), 22 Ch. D. 619).

Relatives of the wife or husband of the testator or intestate, including step-children, are strangers in blood so far as that connection is concerned. They may, of course, be chargeable at a lower rate in some other capacity. A reversionary legatee will not qualify for the 1 per cent. rate by marrying the widow or widower of the testator or intestate, even before the legacy falls into possession, for there can be no *consanguinity* (such as would affect the rate of duty) between the original spouses. The divorced spouse of the testator or intestate is chargeable *primâ facie* at 10 per cent.

Where an adoption has been duly effected under statutory powers, and the adopted child or the spouse or issue of the adopted child takes any interest in real or personal property under a disposition by the adopter, or the adopter takes any such interest under a disposition by the adopted child or the spouse or issue

of the adopted child, any Legacy Duty (or Succession Duty) leviable in respect thereof is payable at the same rate as if the adopted child had been a child born to the adopter in lawful wedlock (Adoption of Children Act, 1926, s. 5 (3); Adoption of Children (Scotland) Act, 1930, s. 5 (4)). The adoption does not affect the rate of duty on benefits passing between the adopted child and the relatives of the adopter.

Natural children and other persons related only by natural ties are treated as strangers in blood, but a person legitimated by the law of his domicile is legitimate for the purpose of the Legacy Duty (*Skottowe* v. *Young* (1871), L. R. 11 Eq. 474). This applies, in particular, to a person who is legitimated *per subsequens matrimonium* by Canon Law in Scotland. As regards persons legitimated under the Legitimacy Act, 1926 (which applies in general only to England and Wales), it is provided by s. 7 that where any legitimated person takes any interest in real or personal property, any Legacy Duty (or Succession Duty) which becomes leviable after the date of legitimation shall be payable at the same rate as if the legitimated person had been born legitimate. The time when the legitimation must take place, in order to affect the rate on any particular legacy, seems to be the same as the time for acquiring relationship by marriage.

It will be observed that s. 9 of the Legitimacy Act, which applies to Scotland as well as England and Wales, and confers on a mother and her illegitimate child or his issue certain mutual rights of succession on intestacy, makes no provision for relief from duty.

Time for Payment: Accretions.

The right of the Crown to Legacy Duty arises on the death of the person under whose will or intestacy a benefit in personal estate is conferred, but the duty does

not become payable until payment of the legacy or residue, or until it is retained for the benefit of the legatees, or otherwise delivered, paid or satisfied (L. D. A. 1796, s. 6). This provision allows the executors or accountable persons time to get in the estate and pay the debts and funeral and testamentary expenses. English executors have a year in which to get in and administer the estate (A. E. A. 1925, s. 44), and unless there is a direction in the will that legacies are to carry interest they can pay them at any time within that period without interest, but if they pay any legacy before that period expires, Legacy Duty thereon becomes payable and accounts should be rendered to the Commissioners within twenty-one days after payment. If the account is delayed beyond this period, interest on the duty is chargeable from the date of payment of the legacy to the date when the account is rendered (*Nisbett's Trustees* v. *Learmonth* (1845), 8 Dunl. 69). But no interest is charged on the duty on ordinary legacies within one year from the death of the testator unless they are actually paid within that period and an account is not rendered within twenty-one days. A legacy may be *satisfied* without any delivery or payment, for example, where a debt owing to the testator is released (*cf. A.-G.* v. *Metcalfe* (1851), 6 Exch. 26).

As the right to duty accrues at the death of the testator the Revenue is entitled not only to duty on the legacy or residue itself, but also on all accretions, whether by way of interest, dividends or otherwise, between the date of death and the time of payment or retainer, so that where the legatee is entitled to the accretions, the latter should be added to the legacy and duty tendered on the whole (*A.-G.* v. *Cavendish* (1810), Wight. 82; *Thomas* v. *Montgomery* (1827), 3 Russ. 502). Where the gift is specific its value at the date it is allotted, appropriated or retained should be

accounted for, and not the value at the date of death, and intermediate profits and accretions (if any) should be added. If a legacy is directed to be paid at the expiration of two years without interest, Legacy Duty is not payable on the legacy until the expiration of that period, and no interest would in such case be chargeable. The intermediate income attributable to the legacy should, however, be included in the residuary account. It follows that if the legacy is directed to be paid at the expiration of three months from the death and is not paid until six months, interest for three months should be added to the legacy and duty tendered on the total sum.

Where the testator directs his estate to be accumulated for a period and then divided among legatees, duty is payable on both the property itself and the accumulations at the date of division (*Advocate-General* v. *Oswald* (1848), 10 Dun. 969).

The meaning of "retainer" was analysed in *Lord Advocate* v. *Wotherspoon's Trustees,* [1930] S. L. T. 82. "The retainer contemplated by s. 6 is something different from the holding or retention of a trust fund by the trustees in order to carry out the trust purposes. The retainer, which gives rise to a right of the Crown to demand payment of the duty, must be a retainer in the right and for the benefit of the legatee . . . Light is thrown upon the meaning of the term by its association with the words delivery, payment, or other satisfaction or discharge of a legacy. Retainer is . . . something of an analogous character to actual delivery or payment . . . it is an essential feature of retainer that the legatee should be entitled either to demand payment or delivery, or, at all events, should have the beneficial enjoyment of the legacy through the hands of the trustees." The substantive decision was that where a beneficiary was given the income of property for a fixed

term of years and the capital absolutely if she should be living at the expiration of the term (as happened), Legacy Duty, having been correctly paid in the first instance on the value of the "annuity for years" under the L. D. A. 1796, s. 8, was payable at the expiration of the term on the *then* value of the capital. The original "retention" of the property on trust was not a "retainer" of the legacy of capital within the meaning of s. 6.

It follows from the above rules that if a legacy, which would otherwise be payable on the death of a life tenant, is for any reason paid sooner, the Legacy Duty is leviable at once and is not deferred until the life tenant's death. If the payment is made under a power of advancement contained in the will, over-riding the life tenant's interest, or if that interest has ceased on some contingency (such as re-marriage), duty is payable on the full value of the property taken, but the duty (if any), already paid in respect of the life interest, is adjusted. If, however, the life tenant has *released* his interest, there is no adjustment of the duty paid by him, but the present value of his interest is allowed as a deduction from the property chargeable.

Residuary Estate.

When the legacies have been paid and the estate realised, a general account showing what the residuary estate consists of should be rendered. This account should show the position of the estate at the date it is paid over or is retained upon trust, and such date is in practice taken as the date of the account. All unrealised assets should be accounted for at their value on such date and all intermediate profits and accretions and income should be included and, where necessary, apportioned up to the date of the account (*A.-G.* v. *Cavendish* (1810), Wight. 82; *Thomas* v. *Montgomery* (1827), 3 Russ. 502).

It has been decided that a residuary legatee, absolutely entitled, has a right to have the residue of the personal estate of the testator transferred and paid to him with any accrued income, when the personal estate has been fully administered by the executors, and the net residue ascertained, but until that time he has no property in any specified investment forming part of the estate or in the income of any such investment. And it was accordingly held that the residuary legatee, being a charity and not liable to Income Tax, was not entitled to repayment of the tax deducted from the income of the residuary estate between the date of death and the paying over of the ascertained residue to the charity (*Barnardo's Homes* v. *Special Commissioners,* [1921] 2 A. C. 1). Subsequently, however, the F. A. 1922, s. 30, enacted that a charity in such circumstances should be entitled to treat the income accruing after the expiration of the first year from the testator's death as income of the charity, and accordingly it would be entitled to recover any Income Tax deducted from such income.

The residuary account should show in detail the amounts realised by such of the securities as have been sold. Those unsold, which are to be retained or are allotted to the beneficiaries in specie, and also all investments made since the death, should be brought in at their value at the date of the account or at the date when they are actually allotted. Government securities which have been taken over by the Revenue in payment of Estate Duty on the Inland Revenue Affidavit should be accounted for at the sum at which they were taken over, and not at their value at the date of the account. All other property which has been realised should be accounted for at the price realised, unsold property (including Government securities which it is intended to utilise in paying the Legacy Duty on the residuary account) being brought in at the value at the date of the

account (L. D. A. 1796, s. 22). *Primâ facie,* the delivery of the residuary account implies that the executor has brought the administration to an end, and that he is going to hold the property thereafter as a trustee (*re Claremont,* [1923] 2 K. B. 718). But this presumption can be rebutted not only in favour of the Crown, but also, though less easily, in favour of the subject. If, therefore, after the residuary account is rendered, but before the administration of the estate is in fact concluded, any property is realised for a sum in excess of or less than the estimate for Legacy Duty, further duty is payable or duty may be returnable on the basis of the sale price (*A.-G.* v. *Dardier* (1883), 11 Q. B. D. 16).

From the gross total of the estate should be deducted —(*a*) Estate Duty and Court Fees; (*b*) Funeral expenses; (*c*) Debts; (*d*) Testamentary Expenses such as solicitor's costs, costs of sale, and general expenses of realising and getting in and dividing the estate; (*e*) Amounts expended in investments made since the death; and (*f*) Legacies, and, where legacies are given free of duty, the Legacy Duty thereon.

Deduction may also be taken in respect of a tombstone or memorial which the testator has directed to be provided out of his estate. But where such a direction enures for the benefit or ornamentation of a church (for instance, provision for a memorial window or for the repair of a monument in the church), it is a good charitable bequest (*Hoare* v. *Osborne* (1866), L. R. 1 Eq. 585), and Legacy Duty is payable on the amount so appropriated, which may be deducted in the residuary account after the duty has been accounted for on a separate receipt.

The balance represents the residuary estate, but, as already pointed out, to this should be added all income, profits, rents and accretions which have accrued to the estate or which it has earned from the date of death

up to the date of the account. Thus, dividends on securities, bank interest, rents of leaseholds and real estate directed to be sold where the proceeds are included in the account, and profits of business up to the date of winding up, after deducting all proper expenses of carrying on the same, should be accounted for. Duty is then assessed on the aggregate total without interest, but if considerable delay occurs between the date of the account when the residue is presumably paid over to the beneficiaries or retained for their benefit and the date when the account is brought in for assessment, interest on the duty is chargeable as the duty becomes in arrear from the date of payment or retainer.

It may be pointed out that under the A. E. A. 1925, s. 35, personal estate subject to a charge or lien is now, like real estate, primarily liable for payment of such charge or lien in the absence of an express direction to the contrary. A general direction for payment of debts out of residue or a charge thereon of such debts is not a sufficient expression. If, therefore, a specific bequest is subject to a lien for unpaid purchase money or to a charge for an overdraft the legatee must make repayment and cannot look to the residuary estate unless there is an express direction in the will that the bequest is to be taken free from such lien or charge.

As to the apportionment between capital and income, where a residuary estate is settled, of the payments made by the executors in the course of administration, the rule seems to be that the tenant for life should be deprived of the income of such a sum as, with interest at the average rate earned by the property from the date of death to the date or dates of payment, would have been sufficient to satisfy the payments (*Allhusen* v. *Whittell* (1867), L. R. 4 Eq. 295; *re McEuen, McEuen* v. *Phelps*, [1913] 2 Ch. 704; *re Wills, Wills* v. *Hamilton*, [1915] 1 Ch. 769; p. 215, *supra*).

It will be observed that the values for the purposes of Estate Duty and for Legacy Duty are distinct. That for Estate Duty is the value on the day of the testator's death, while the value for Legacy Duty is, strictly speaking, the value of the estate at the time it is paid over to or retained for the benefit of the legatees, or, in practice, its value at the date of the account, with all intermediate accretions.

Legacy Duty on Death of a Life Tenant.

Where Legacy Duty becomes payable on the death of a limited owner, the claim for Legacy Duty may generally be regarded not only as accruing at such date, but as also payable at the same time, for the estate has already been got in and realised and no considerable time is therefore required in order to ascertain the property on which duty is payable. The value for Legacy Duty may therefore be ascertained on the day when the limited owner dies (*see A.-G.* v. *Rudge,* [1928] 2 K. B. 515); and the account should not include any income earned between that day and the date when the account is actually delivered, but interest at 4 per cent. is charged on the duty from the date of death of the limited owner to the date of rendering the account. For instance: *A* by will gives his residuary personal estate to his wife for life and on her death to his nephew *B* absolutely. As the wife is not liable to Legacy Duty (unless the £15,000 limit is exceeded) a residuary account is not required on *A's* death, but on the death of the wife Legacy Duty becomes payable on the value of the investments then representing the trust estate, and interest on the duty is payable from that date to the date of delivery of the account. In strictness, in these cases the account should give particulars of the estate at the time it was retained in trust for the widow, showing the realisation of the estate, the

payments made thereout, and the investments made by the trustees, but in ordinary cases it is sufficient to show the investments representing the trust estate at the death of the life tenant. If there is a considerable discrepancy between their value and the value of the estate at the testator's death an explanation in the form of a short history of the settled fund should be furnished.

If further Estate Duty becomes payable on the death of the life tenant, it may be deducted, as it constitutes a charge on the settled property.

Legacies given free of Duty.

Where there is a direction that any particular legacy or legacies is or are to be free of Legacy Duty, no duty is to be charged upon the money applied for the payment of such duty, notwithstanding that the same may be deemed a legacy to the legatees (L. D. A. 1796, s. 21), and the amount of the Legacy Duty may be deducted in the residuary account.

Any words indicating an intention on the part of a testator that the legatee shall receive his legacy without any deduction for duty are sufficient. For example, "free of duty," "free from all duties," "without any deduction" (*Barksdale* v. *Gilliatt* (1818), 1 Swan. 562), "clear of all deductions" (*Dawkins* v. *Tatham* (1829), 2 Sim. 492), "free from all expense" (*Gosden* v. *Dotterill* (1832), 1 My. & K. 56), "clear of all taxes and outgoings" (*Louch* v. *Peters* (1834), 1 My. & K. 489), "clear" (*Ford* v. *Ruxton* (1844), 1 Coll. 403), and "free." A direction to pay all legacies free of duty includes the Legacy Duty on a life tenant's death as well as the Legacy Duty on the testator's death—though it does not usually cover Estate Duty payable on the death of the life tenant (*re Wedgwood, Allen* v. *Public Trustee,* [1921] 1 Ch. 601; *re Sarson, Public Trustee* v.

Sarson, [1925] Ch. 31; *re Laidlaw, Wilkinson* v. *Lyde*, [1930] W. N. 206).

But a direction to invest a sum sufficient to produce a *clear* yearly income does not exonerate the fund from duty where it is given in succession to persons liable to different rates of duty (*Sanders* v. *Kiddell* (1835), 7 Sim. 536). If a will confers on a legatee two separate benefits, one (only) of which is expressed to be free of duty, the other *primâ facie* is not free of duty (*Macdonald's Trustees* v. *Aberdeen Corporation* (1902), 4 Fra. 907; *re Howe, Wilkinson* v. *Fernichough* (1910), 103 L. T. 185). A direction that a specific bequest is to be free of Legacy Duty does not cover French Mutation Duty (*re Scott, Scott* v. *Scott*, [1915] 1 Ch. 592).

A direction to pay out of residue the "testamentary expenses, including death duties," does not confer freedom from Legacy Duty: the only death duty which is a testamentary expense is the Estate Duty on the free personal estate in Great Britain, and the words "including death duties" do not enlarge the meaning (*re Massey, Ram* v. *Massey* (1920), 122 L. T. 676).

A direction in a will, to pay "all my legacies" free of duty, covers legacies given by a codicil (*Byne* v. *Currey* (1834), 2 Cr. & M. 603); and a direction, to pay "all the legacies and bequests given by this my will" free of duty, has been held to cover a legacy given by codicil "in addition to those named in my will" to a person not named in the will (*re Sealy, Tomkins* v. *Tucker* (1901), 85 L. T. 451). But legacies given by codicil were *not* covered by a direction in the will to pay free of duty the legacies "*hereinbefore* bequeathed" (*Chatteris* v. *Young* (1827), 2 Russ. 183), or the "legacies and annuities *herein* by me given" (*Early* v. *Benbow* (1846), 2 Coll. 342), or the "*foregoing* bequests" (*Brown's Trustees* v. *Gow* (1902), 5 Fra. 127)—

although in each of the last two cases there was a provision that the codicil should be regarded as part of the will. These decisions should be compared with *Williams* v. *Hughes, infra*. When a legacy is given by will free of duty, a larger legacy substituted by codicil will also be free of duty if it can be regarded as an *augmentation* of the original benefit (*Cooper* v. *Day* (1817), 3 Mer. 154; *Shaftesbury* v. *Marlborough* (1835), 7 Sim. 237). The same principle may apply where an *additional* legacy is given by codicil to the same legatee (*Johnstone* v. *Harrowby* (1859), 1 De G. F. & J. 183, 192), or where the codicil makes a general variation in the amounts of legacies (*Williams* v. *Hughes* (1857), 24 Beav. 474, 482, where the original direction referred to "the *foregoing* legacies"; *Fisher* v. *Brierley* (*No.* 2) (1861), 30 Beav. 267). On the other hand, if a legacy is given free of duty by the will, and a substantially distinct bequest is given by codicil, the latter is *not* free of duty in the absence of a further express direction: examples are a substituted annuity of different amount, given in different terms (*Burrows* v. *Cottrell* (1830), 3 Sim. 375), and a settled legacy given in substitution for an absolute legacy (*re Trinder, Sheppard* v. *Prance* (1911), 56 S. J. 74).

If a legacy is given free of duty by the will and a different person is substituted as legatee by codicil, the legacy remains free, at any rate where the codicil confirms the will except as expressly varied (*M'Alpine's Trustees* (1883), 10 Rett. 837). But if an annuity is given free of duty by the will to *A*, and is continued after *A's* death to *B* by codicil, *B's* benefit *primâ facie* is *not* free of duty (*Urquhart's Trustees* v. *Urquhart* (1900), 3 Fra. 242).

A residuary estate itself cannot be given free of duty, for obviously the duty can but be paid out of the residuary estate itself (*Londesborough* v. *Somerville*

(1854), 19 Beav. 295), but a life or other interest carved out of residue may, it seems, be given free of Legacy Duty (*re Kennedy, Corbould* v. *Kennedy,* [1917] 1 Ch. 9). So also a share of residue may be exonerated at the expense of the other shares (*Warbrick* v. *Varley* (*No.* 1) (1861), 30 Beav. 241). Where legacies are given free of duty, but the estate is insufficient to pay them in full, the duty must, of course, be paid out of the legacies (*Lord Advocate* v. *Miller's Trustees* (1884), 21 S. L. R. 709; *re Turnbull, Skipper* v. *Wade,* [1905] 1 Ch. 726). The method to be adopted when an estate is deficient and the legacies or some of them are given duty free is explained on pp. 385–386.

No distinction has been made above between English and Scottish decisions, and, where the construction of a will, not of a taxing Act, is in issue, allowance may have to be made for differences in the law. Further guidance may be found in the corresponding decisions as to Estate Duty (pp. 220–227) and Succession Duty (pp. 508–510).

The provision that money directed to be applied in payment of Legacy Duty is not liable to Legacy Duty does not apply to money directed to be applied in payment of other duties. Therefore, where leaseholds are bequeathed free of Succession Duty or real estate is devised free of Estate Duty and Succession Duty, the direction in the will is regarded as a legacy of the amount of such duties, and as such is taxable with Legacy Duty. Similarly, where the deceased makes a gift *inter vivos* within three years of death, and by his will directs any duties thereon to be paid out of his personal estate, Legacy Duty is payable under his will on the amount of such duties as a legacy to the donee. Deduction may then be taken in the residuary account in respect of the duties so directed to be paid. In connection with legacies of this type reference may be

made to the definition of pecuniary legacy in the A. E. A. 1925, s. 55 (1) (ix).

A direction that legacies payable out of personal estate in Great Britain are to be free of duty is superfluous in relation to Estate Duty, as that duty does not form a charge on the personal estate and is not therefore deducted from any such legacies unless there is an express direction in the will that it shall be (*cf. re Morrison, Morrison* v. *Morrison* (1910), 102 L. T. 530). The Estate Duty on the whole personal estate in Great Britain, including leaseholds, is, in the absence of special directions, deducted against the residue in the residuary account. But in the case of real property, property outside Great Britain and property passing under a general power of appointment, the Estate Duty is a direct charge. Legacies payable from these sources are liable *primâ facie* to bear their due proportion of such Estate Duty, and if they are given free of duty, the amount of the Estate Duty constitutes an additional legacy. Again, where a legacy is settled and, on the death of a life tenant a second Estate Duty becomes payable, that duty is a charge on the legacy and payable thereout subject to any direction to the contrary in the will (pp. 203–214, *supra*).

Reversions.

Where a reversionary interest is given as a legacy or is included in a residuary estate liable to Legacy Duty, the executors are not bound to pay the duty until it falls into possession. For instance: £500 is given to *A* for life and on his death to *C*. If *C* dies before *A*, Legacy Duty is not immediately payable under his will on his death, but his executors can wait until the death of *A*, when they would, of course, pay duty on the full £500 or the value of the investments representing it. In many cases, however, in order to

dispose of all claims for duty, the executors prefer to pay duty at once and, assuming that the life tenant is in ordinarily good health, this course is acquiesced in by the Commissioners. The value in such cases is ascertained by taking the value of the fund as if in possession and deducting from it the value of the life tenant's interest, which may be calculated according to the tables in the S. D. A. 1853.

If payment on a reversionary interest is not made when the residuary account is rendered, and afterwards, owing to changes or other circumstances, the executors wish to dispose of the outstanding claim before the reversion falls in, the duty would only be accepted on the basis of a commutation (Customs and Inland Revenue Act, 1880, s. 11, and Customs and Inland Revenue Act, 1881, s. 43). If the commutation were agreed to, duty would be assessed on the fund at its value in possession and discounted for the life of the life tenant on a 4 per cent. basis.

If the interest is to fall in on the death or re-marriage of the life tenant or on some other event, only a proportion of the allowance in respect of the life interest is made (*see* p. 310 as to Estate Duty).

Compositions and Remissions.

Apart from the question of commuting Legacy Duty in respect of interests in expectancy, the Commissioners have a general power of compounding all claims for Legacy Duty, whether present or future, in consideration of a single payment (Customs and Inland Revenue Act, 1881, s. 43). And in cases of difficulty or complication they are empowered to compound all claims for death duties and to accept payment of such sum as, having regard to the circumstances, seems proper in full discharge of all claims (F. A. 1894, s. 13). They may also, if they think fit, remit any duty unpaid after

twenty years or any interest thereon (F. A. 1894, s. 8 (11), as extended by F. A. 1907, s. 13). They have also a general power to remit interest at any time where the amount appears to them to be so small as not to repay the expense and trouble of calculation and account (F. A. 1896, s. 18 (3)).

Annuities.

Where a legacy or residue is given by way of annuity, whether payable annually or otherwise, for any life or lives or for years determinable on any life or lives, or for years or other period of time, the value of the benefit taxable with Legacy Duty is as a general rule calculated in accordance with the tables given in the S. D. A. 1853, based upon the period for which the benefit is expected to endure (L. D. A. 1796, s. 8, amended by S. D. A. 1853, s. 31).

Examples of the different kinds of bequests are given below:—

(1) An annual sum or annuity *simpliciter*, payable for the legatee's life or for a fixed period; or

(2) A capital sum of a certain amount with a direction to the executors to purchase an annuity with it; or

(3) An annuity of a certain amount with a direction to the executors to purchase the same; or

(4) An annuity to a person charged on a legacy given to some other person; or

(5) A legacy or residue to a person for life and then to other persons liable (*a*) to the same rate of duty, or (*b*) to different rates of duty.

In the first case, the annuity is payable out of the residuary estate and duty is assessed on the value of the same for the life of the annuitant calculated according to the tables in the S. D. A. 1853. This duty may be paid by four equal payments, the first being due before

or on completing the payment of the first year's annuity, or the whole duty may be paid at once under discount (L. D. A. 1796, s. 8, and S. D. A. 1853, s. 40). If the annuity determines by death or any other contingency (as, for instance, re-marriage or bankruptcy) before the expiration of the four years the instalments of duty which have not become due cease to be payable (s. 8, *supra*).

In the second case, Legacy Duty is payable on the full sum mentioned in the will, as such a bequest vests the sum in the annuitant so that if he dies before the annuity is purchased his executors are entitled to have the sum paid to his estate (*Barnes* v. *Rowley* (1797), 3 Ves. Jun. 305).

In the third case, Legacy Duty is payable on the value of the annuity according to the tables without regard to the sum spent in purchasing the annuity (L. D. A. 1796, s. 10). The duty is payable in full and not by instalments. If the annuitant dies before the purchase is made his representatives can obtain payment of the sum required for the purchase (*Dawson* v. *Hearn*, 1 R. & M. 606). Where the annuity is purchased, the sum actually paid may be deducted in the residuary account, although it may be greater than the value according to the table in the S. D. A. 1853. The annuity before purchase, unless given free of duty, has to be reduced in proportion to the amount of duty payable thereon, and such reduction is to be calculated in the same manner as the duty (L. D. A. 1796, s. 10). Thus, if the annuity is £100 and the rate of duty 5 per cent., the annuity to be purchased is £95.

In the fourth case, Legacy Duty is payable on the value of the annuity as in case (1), but is made payable by the person entitled to the legacy charged, and he is entitled to retain the payments made by him out of the first four years' payments of the annuity (L. D. A. 1796,

s. 9). The duty on his legacy is paid on the balance remaining after the value of the annuity is deducted, so that no further Legacy Duty becomes payable on the determination of the annuity.

In the fifth case, where *all* the persons entitled are liable to the same rate of duty, Legacy Duty is payable on the *corpus* as in the case of a gift to a person absolutely (L. D. A. 1796, s. 12). But where the life tenant is liable to one rate of duty and those entitled on his death to another rate, Legacy Duty is payable on the value of the legacy or residue for the life of the life tenant, and on his death Legacy Duty is again payable, viz., on the *corpus* of the legacy or residue at such date, less any further Estate Duty payable on the life tenant's death.

Legacies in Equal Rate.

Where a fund is settled and all the beneficiaries, present and future, are liable to the same rate of Legacy Duty, the payment on the *corpus* covers all the benefits, and however many limited owners there may be, no further Legacy Duty will be payable on their respective deaths. For instance: *A* by will gives a legacy or share of residue to his nephew *B* for life, and on his death to *B's* children. As *B* and his children are liable to the same rate of duty (5 per cent.), Legacy Duty is payable at once on the capital value of the bequest just as if it were an absolute gift to *B*, and on *B's* death no further Legacy Duty is payable by his children. The Duty is payable by the executors or trustees out of the *corpus* of the fund, which is thus reduced to that extent (L. D. A. 1796, s. 13). If the property were given first to *A's* wife or child for life and then to *B* for life and afterwards to *B's* children, Legacy Duty would be payable in the first instance on the value of the wife's or child's life interest at 1 per cent. (subject to the £15,000

limit, etc.), and on the death of the wife or child further duty would be payable on the capital at 5 per cent., as above. The same procedure would apply if the person taking the first life interest were chargeable at 10 per cent.

The duty on the first life interest in such cases is payable out of the income of the fund : the tenant for life and the trustees who pay him the income are the only persons accountable, and in the event of the duty not being paid, the Revenue has no right to have the duty paid out of the *corpus* (*Bowra* v. *Rhodes* (1862), 10 W. R. 747).

Where an annuity as distinguished from the income of a fund is given to one legatee and the fund itself is given, subject to the annuity, to another legatee liable to the same rate of duty, payment of Legacy Duty on the whole *corpus* of the fund cannot be enforced and the duty on the annuity may be accounted for by way of annuity and paid by four yearly instalments (*Crow* v. *Robinson* (1862), 4 De G. F. & J. 337).

The provision for charging duty on the *corpus* where there are successive interests does not apply to a fund which is directed to be laid out in the purchase of real estate (L. D. A. 1796, s. 19).

Where a legacy is given to a person for life and on his death to a contingent class liable to the same rate of duty, and in the event of the failure of such class there is an intestacy under which the next-of-kin, who would be liable to a *lower* rate of duty, would take, it is not open to the executors to dispose of the claim for Legacy Duty by accounting for duty on the *corpus* at the higher rate. Though the Commissioners of Inland Revenue might not object to accept duty on that basis, they would apparently have no authority to return duty in the event of the failure of the contingent class. The proper course is, therefore, to account for Legacy Duty

in the first instance on the life interest, and on the death of the life tenant on the *corpus* at the rate chargeable according to the circumstances then existing (*re Duppa, Fowler* v. *Duppa,* [1912] 2 Ch. 445).

Duty payable by way of Annuity.

As already mentioned, where Legacy Duty is payable by way of annuity it may, at the option of the parties accountable, be paid at once under discount, or by four equal payments, the first of which is to be made before or on completion of the first year's annuity and the others successively on completing payment of the three subsequent years' annuity.

This provision prevents the duty from falling too heavily on the annuitant or life tenant out of whose annuity or yearly income it is payable. Moreover, where an annuitant or life tenant dies before all the four payments have become due and payable the remainder cease to be payable, and if in such case the duty has been paid in full under discount, a return of the proportion of instalments which would not have become due and payable at the death of the annuitant can be claimed (L. D. A. 1796, ss. 8 and 12).

Where the residue is given on trust to sell with power to postpone, the annuity or income it produces should be ascertained as follows:—

(*a*) If a sale has taken place and the proceeds have been invested before the first instalment of Legacy Duty becomes due, the actual income of the investments should be accounted for.

(*b*) But if there has been no sale or if a sale has taken place but the proceeds have not been invested, the income should be calculated according to the current rate which trustee securities would produce ($4\frac{3}{4}$ per cent. at present).

Where there is only a power to sell or no direction at all, the income should be ascertained as at (*a*) above if the property has been sold and the proceeds invested before the first instalment of duty is due, but if the property is held in specie, the actual income for the year preceding the date when the first instalment becomes due should as a general rule be taken as the basis of the account.

Where an annuity is given subject to a contingency, the duty is calculated in the first instance without regard to the contingency, and if the annuity subsequently determines upon the contingency in the lifetime of the annuitant, all payments which would have become due after the happening of such contingency cease to be payable, and the persons paying the duty may apply for a return of so much of the duty paid as will reduce it to the duty which would have been payable for such annuity if calculated according to the period for which it has actually endured (L. D. A. 1796, s. 8). For instance, where an annuity or legacy or residue is given to a person for life or until he or she marries again, or to a man for life or until he becomes bankrupt or attempts to alienate his interest, duty is taken in the first instance on the value of the life interest by way of annuity. Then, if the contingency happens, the duty may, on application, be readjusted to fit the period for which the benefit actually endured.

Where duty is payable by way of annuity on an annuity for which capital is directed to be set apart, or a legacy or a share of residue, the proper course is for the accountable parties to deduct the capital set apart, legacy, or share of residue, in their residuary account, and pay the Legacy Duty on the annuity or life interest on separate forms (No. 2). On the death of the annuitant or life tenant, further duty will become payable on the then value of the capital set apart, legacy, or share of residue, less any further Estate Duty payable.

But it is open to the Commissioners to close the matter at once by allowing the parties to "set a value" on the annuity fund, legacy or share of residue, by deducting merely the value of the annuity or life interest according to the tables in the S. D. A. (L. D. A., s. 22), and if this is done, the death of the annuitant or life tenant will not give rise to any further claim for Legacy Duty. Such deductions would not be allowed where the annuitant or life tenant was in precarious health or where the deduction entirely exhausted the residuary estate. If in such a case an annuity were given free of duty, it would be necessary to revise the deduction in the residuary account (both for the annuity and the duty thereon) should the death of the annuitant within four years lead to an adjustment of the duty on the annuity, and the deduction in the first instance of the value of the annuity in the residuary account would only be allowed on this understanding.

Contingent Legacies.

Where a legacy or residue not chargeable by way of annuity is given subject to a contingency which may defeat such gift and on the happening of which a higher rate of duty will become chargeable, duty is to be paid on the legacy or residue as an absolute bequest without regard to the contingency (L. D. A. 1796, s. 17). But if the contingency happens, and the legacy goes to a person liable to a higher rate of duty, the difference between the duty so paid and the higher rate of duty will then be payable (*ibid.*).

In cases of this kind the value of the legacy for the purpose of taking the higher rate is its value at the happening of the contingency, and an allowance of the duty paid is made by deducting from the value such a capital sum as the duty already paid is sufficient at the higher rate to release. Thus, if a legacy of £1,000 is

given to a nephew *B* absolutely, and in the event of his dying under twenty-one without issue to a cousin *C*, Legacy Duty is paid in the first instance on £1,000 at 5 per cent. *B* dies without issue, and, owing to depreciation in investments, the value of the legacy has fallen to £900. The duty already paid, viz., £50, is sufficient at 10 per cent. to release £500 of the above value, leaving duty at 10 per cent. on the balance of £400, viz., £40, to be paid.

There is no provision for repayment of duty if the legacy goes to a person chargeable at a *lower* rate.

Benefits "from time to time."

Where the value of any benefit given by will can only be ascertained from time to time by the actual application of the fund allotted for the purpose, or where by reason of the form and manner of the gift the amount or value of the benefit cannot be ascertained so that duty can be taken in the ordinary way, the duty is to be charged upon the sums of money or effects which shall be applied from time to time, as separate and distinct legacies (L. D. A. 1796, s. 11). Thus, *A* by will bequeaths a legacy to an infant legatee on his attaining twenty-one, with a direction that such part of the income as may be required is to be applied for his maintenance. Legacy Duty is to be accounted for periodically on the sums so applied (*A.-G.* v. *Wade*, [1910] 1 K. B. 703). When *A* attains twenty-one, duty will become payable upon the capital together with any accumulations of income. The value for the purpose of this duty is the value when *A* attains twenty-one, not the value when the legacy was first set apart (*Lord Advocate* v. *Wotherspoon's Trustees*, [1930] S. L. T. 82). So also where trustees are given a percentage on trust income during the period they act as trustees, Legacy Duty is payable from time to time on the actual sums received by them,

and periodical accounts should be rendered. And where an annuity is bequeathed free of Income Tax, Legacy Duty (unless compounded by payment on the value for the annuitant's life at an agreed fixed rate of tax) is payable periodically on the amounts actually paid for Income Tax according to the rate of tax for the time being chargeable. The *gross* annual payment in such cases, including the amount which is applied in payment of the Legacy Duty, is income of the legatee for the purpose of the Income Tax Acts (*Colville* v. *Inland Revenue Commissioners,* [1923] S. C. 423). Section 11 has also been held to apply to payments made by trustees under a discretionary power to continue certain voluntary allowances which the testator had been making: the benefits could not be regarded as annuities (*re Northcliffe, Arnholz* v. *Hudson,* [1929] 1 Ch. 327).

Corrections.

Where too little duty has been paid by mistake, the additional duty, if paid within three calendar months, together with a penalty of 10 per cent. thereon, will be accepted and a proper receipt given (L. D. A. 1796, s. 30). The penalty is not usually insisted upon unless there has been undue delay or other special circumstance.

A case of too little duty having been paid occurs where the relationship of the legatee to the deceased is wrongly given and a higher rate is in fact payable. In such case, a fresh receipt showing the proper amount of the duty and also the old receipt should be furnished. The duty is then assessed afresh in full and the duty already paid appropriated in payment *pro tanto,* the old receipt being cancelled.

Return of Duty.

Where, after duty has been paid, any debt is recovered against the estate or any loss happens, by

reason whereof, or for any other just cause, a beneficiary is obliged to refund his legacy, or the residue or any part thereof, a repayment of duty can be obtained on due proof on oath as to the facts being made (L. D. A. 1796, s. 34). So also duty paid by executors or administrators whose authority is afterwards revoked (as where the grant of Probate is revoked) is to be returned. If, however, it is such as ought to be paid by the rightful executor or administrator, it is not returnable but is allowed in account with the rightful executor or administrator (*ibid.*, s. 37). There is no limit of time for repayments.

CHAPTER VIII.

THE PERSONS ACCOUNTABLE FOR LEGACY DUTY.

The executors or administrators of the testator or intestate are primarily liable to account for and pay Legacy Duty on retainer, either for their own benefit or for the benefit of any other person, of any legacy or the residue of any personal estate or share thereof, and also on delivery, payment, or other satisfaction or discharge of any legacy, residue of personal estate, or share thereof: if they retain or satisfy a legacy or residue without having first paid the duty, such duty is a personal debt due from them to the Crown (L. D. A. 1796, s. 6).

As to the *time* for payment of the duty, *see* pp. 343–346. The fact that a Chancery action has been commenced for the administration of the estate is not a reason for non-delivery of accounts in respect of legacies which have already been paid (*re Sammon* (1838), 3 M. & W. 381).

Where, under a deed, a person has and exercises a general power of appointment by will over a fund, the executors of his will, and not the trustees of the settlement, are the persons to administer the fund and to pay the Legacy Duty under the appointor's will (*re Philbrick's Settlement* (1865), 34 L. J. Ch. 368; *re Hoskin's Trusts* (1877), 6 Ch. D. 281; and see *O'Grady* v. *Wilmot,* [1916] 2 A. C. 231). If the trustees of the settlement distribute the fund they would

presumably be liable for the Legacy Duty as executors *de son tort* of the appointor's estate. The same principle would apply, if the power were conferred by a will, as between the trustees of the original will and the executors of the appointor.

Executors may from time to time distribute such portions of the estate as have been administered, on payment of the proper amount of duty (L. D. A. 1796, s. 26). But no legacy or share of residue of personal estate or any part thereof is to be paid or satisfied without taking a receipt or discharge in the form provided by the Act (*ibid.*, s. 27). Printed forms of this receipt containing instructions as to how it is to be filled up are furnished by the Commissioners, and should be used by the accountable parties. The receipt is to be duly stamped, and unless this is done cannot be received in evidence (*ibid.*). Where the duty is payable by way of annuity, the stamped receipts are not required except on completing the payment for each of the four years' instalments (*ibid.*).

Executors paying or satisfying legacies or shares of residue without taking such receipts and having the same stamped, and also the legatees receiving such legacies or shares of residue without giving the proper receipts, are liable to a penalty of 10 per cent. on the value of the property in question (*ibid.*, s. 28).

Receipts for legacies or shares of residue are to be brought for assessment and stamping within twenty-one days of the date thereof under a penalty of 10 per cent. on the duty (*ibid.*, s. 29, and Probate and Legacy Duties Act, 1808, s. 44). The executors are the persons liable to see that the receipts are duly stamped and the legatee is under no obligation in this respect.

Executors who retain a legacy or residue for their own benefit are required to bring in an account and on assessment of the duty to pay the same within fourteen

days under a penalty of treble the amount of duty (L. D. A. 1796, s. 35).

In practice, penalties for delay in payment of Legacy Duty are not usually insisted upon by the Commissioners, and the acceptance by them of the proper duty and interest thereon is an absolute waiver of any penalties which may have been incurred (Inland Revenue Act, 1868, s. 9).

The forms of receipt for legacies are not liable to Stamp Duty, and therefore it is not necessary for legatees to affix receipt stamps when signing receipts for their legacies (L. D. A. 1796, s. 41).

Liability of Legatees.

The liability of an executor or administrator, who is also a beneficiary, has been mentioned already. In other cases, if the executor or administrator has received or deducted the amount of the duty before payment or satisfaction of the legacy or residue, the legatee is under no liability. But if the executor or administrator has paid or satisfied a legacy or residue *without* having received or deducted the duty, then the legatee is personally accountable *as well as* the executor or administrator (L. D. A. 1796, s. 6). Legatees are or may be liable also in the special cases discussed under the next heading.

The Crown cannot recover out of one legacy or share of residue the duty in respect of another legacy or share (*Wright* v. *Barnewall* (1849), 19 L. J. Ch. 38). Even where two separate legacies are given to the *same legatee*, there is no lien or charge on either for the duty in respect of the other (*A.-G.* v. *Giles* (1860), 5 H. & N. 255).

When Executors are not Liable.

There are certain exceptions to the rule as to the liability of executors and administrators. (1) Where a legacy is given subject to an

annuity to another person, the legatee is liable for the duty on the annuity (L. D. A. 1796, s. 9). In such cases the legatee is entitled before paying over the first four yearly instalments of the annuity to the annuitant to deduct from each instalment one-fourth of the duty payable in respect of the annuity (*ibid.*). The Legacy Duty on the legacy so charged is to be calculated on its value after deducting the value of the annuity. The section only applies where a legacy is given to one person charged with an annuity to another person to whom there is no direct gift. If, therefore, the legacy were given to trustees upon trust to pay the annuity and subject thereto for the benefit of the legatee, such trustees would be the persons primarily liable for the duty and they should deduct the proper proportion thereof against each beneficiary.

(2) Where articles of furniture, plate, or other things not yielding any income, are given to be enjoyed by different persons in succession, Legacy Duty is not payable until the property comes into the hands of a person competent to dispose or who actually sells or converts it into money or property producing income; and the executors are justified in handing over such articles to the tenant for life without providing for the future claim for duty which is accordingly primarily payable by the person who becomes competent to dispose of the property, or who actually sells it, whether he is entitled to do so or not (L. D. A. 1796, s. 14). Where any such articles are bequeathed as heirlooms with settled estates and are subsequently resettled, the period of exemption from Legacy Duty expires on the death of the original tenant for life and Legacy Duty becomes payable as on that date and upon the then value of the heirlooms, the trustees of the re-settlement being accountable (*A.-G.* v. *Bruce*, [1901] 2 K. B. 391). Somewhat similar rules apply to chattels certified by the Treasury to be of

national, scientific, historic, or artistic interest, which, whether settled or not, are exempted from duty until sold (F. A. 1930, s. 40—replacing F. A. 1896, s. 20, F. A. 1910, s. 63, and F. A. 1921, s. 44). On a sale taking place (unless the sale is to the excepted bodies mentioned on p. 266, *supra,* in which case absolute exemption is given), Legacy Duty becomes payable, on the amount realised, by the person by whom or for whose benefit the sale is made and the duty, if unpaid, becomes the debt of such person (*re Scott, Scott* v. *Scott,* [1916] 2 Ch. 268).

(3) Where a legacy or residue is given so that different persons become entitled in succession, the executors are accountable for duty on the *corpus* where all the beneficiaries are liable to the same rate of duty. But where duty is chargeable at different rates, the executors are absolved from liability after they have accounted for the duty immediately payable and handed over the fund to the trustees of the will (L. D. A. 1796, s. 13). In such case the trustees, including any new or substituted trustees, are accountable for the duties subsequently payable (*re Jones's Trust* (1852), 21 L. J. Ch. 566). For instance: suppose £500 is given to *A* for life and on his death to *B,* and *A* and *B* are liable to different rates of duty; the executors, after accounting for the duty on *A's* interest and handing the legacy over to the trustees, are absolved from further liability and on the death of *A* the trustees are liable to account for the duty then payable.

(4) Where a legacy, not chargeable by way of annuity, is given subject to a contingency, duty is chargeable as on an absolute bequest, but if the contingency happens and the legacy goes to a person liable to a higher rate of duty, he is accountable for the difference between the duty originally paid and the higher rate of duty (L. D. A. 1796, s. 17).

The reason for these exceptions is that the executors' duty is to get in the testator's estate, pay his debts, and finally distribute the estate or retain it upon trust, and they could not safely do this if they were liable to indefinite claims for duties payable at some future date.

Agents.

Any person who, having received any sum of money as and for any duty, does not apply the money to the due payment of the duty, is personally accountable to the Revenue (Stamp Duties Management Act, 1891, s. 2). The Crown has obtained judgment under this provision against a solicitor who, on paying over the residue of an estate, retained his costs, including £10 for Legacy Duty, but, on finding that the costs had been underestimated, applied the £10 in part payment of the difference (*Lord Advocate* v. *Gordon* (1901), 8 S. L. T. 439).

Purchasers.

The purchaser of a legacy is liable, in the same way as the original legatee in whose shoes he stands, for the Legacy Duty thereon. An insurance company, in whose favour a life interest was charged with annuities, has been held to be accountable for the duty on such life interest, notwithstanding that the amounts received by the company were only part of the income and paid under an Order of Court which improperly omitted to provide for the duty (*Bryan* v. *Mansion* (1857), 26 L. J. Ch. 510). If the executors pay a legacy to a purchaser without deducting the duty, they can recover the amount of the duty from him subsequently, including the duty on the income up to date, as from an ordinary legatee (*Nisbett's Trustees* v. *Learmonth* (1845), 8 Dun. 69). But the executors cannot recover from the purchaser of a legacy the duty

in respect of another separate legacy given to the same legatee (*Bignold* v. *Giles* (1858), 28 L. J. Ch. 238); nor can the Crown (*A.-G.* v. *Giles* (1860), 5 H. & N. 255). The executors may also be disentitled to recover the amount of the duty from a purchaser, if they have allowed money, which was primarily liable to be used for the purpose, to pass through their hands (*Farwell* v. *Seale* (1849), 3 De G. & Sm. 359).

As between vendor and purchaser of a legacy, the duty falls, in the absence of contrary agreement, on the purchaser: the duty is not an "incumbrance" (*Bliss* v. *Putnam* (1843), 7 Beav. 40). Where a specific part of a legacy is assigned, the assignee bears a rateable proportion, notwithstanding that the assignor may give a covenant for further assurance (*re Repington, Wodehouse* v. *Scobell,* [1904] 1 Ch. 811).

A purchaser, of course, is concerned only where he buys a legacy or share of residue as such. Legacy Duty is never a specific charge on the actual property after it has passed into the ownership of the beneficiary.

Rights of Accountable Persons against Beneficiaries.

Where accountable parties declare themselves ready and willing to pay over or satisfy any legacy or residue after deducting the duty thereon, but the legatee refuses to accept and give a proper release for it, then if any action is afterwards brought to recover the legacy the Court may order all costs and expenses to be paid by the legatee so refusing (L. D. A. 1796, s. 24).

If the executors omit to deduct or collect the duty in the first place, they can recover the amount from the legatees subsequently. They are not debarred by the fact that the payments to the legatees were made without deduction under an Order of Court which

omitted to provide for the duty (*Foster* v. *Ley* (1835), 2 Bing. (N.C.) 269). Nor are they estopped by an erroneous recital that the duty has been fully paid, contained in a deed of release (*Brooke* v. *Haymes* (1868), L. R. 6 Eq. 25). Although executors or trustees, in paying an annuity, should deduct the instalments of duty from the first four yearly payments, they have been held to be entitled to recover from the annuitant the amount of the duty which they paid eight years after the testatrix's death, notwithstanding that the annuitant had meanwhile sold her annuity (*Hales* v. *Freeman* (1819), 1 Brod. & B. 391). Where an executor let a legatee into possession of leaseholds without receiving the Legacy Duty, and was compelled some fifteen years later to pay duty not only on the principal value but also on the profits accrued in the meantime, it was again held that he could recover the whole amount from the legatee (*Bate* v. *Payne* (1849), 13 Q. B. 900). Legacy Duty in respect of a life interest, which was paid by the executors in error out of capital, has been ordered by the Court to be adjusted, after a lapse of seven years, by the deduction out of future income of the overpayments to the life tenant (*re Ainsworth, Finch* v. *Smith,* [1915] 2 Ch. 96).

If the payment of Legacy Duty in respect of a life interest is overlooked, and the executor is obliged to pay the duty personally, he will not be allowed to recoup himself out of the *corpus* of the fund, even where the estate has been administered by the Court (*Bowra* v. *Rhodes* (1862), 10 W. R. 747). Nor may an executor deduct out of one legacy the duty in respect of a separate legacy bequeathed to the same legatee (*Bignold* v. *Giles* (1858), 28 L. J. Ch. 238). In the case cited the former legacy had been assigned to a purchaser, so that no question arose of a personal counterclaim against the legatee.

An executor or trustee who, acting reasonably, pays money to his solicitor for the discharge of duty, may be relieved if the solicitor misappropriates it (Trustee Act, 1925, s. 6, replacing the Judicial Trustee Act, 1896, s. 3; see *re Mackay, Griessemann* v. *Carr* (1910), 103 L. T. 755). But he will not be relieved if he has paid the money to the solicitor prematurely (*Castle* v. *Warland* (1863), 32 Beav. 660). Where, however, a life tenant paid the amount of the duty on his life interest to the trustee's solicitor, and the solicitor misappropriated the money, the trustee, having paid the duty himself, was not allowed to deduct the amount from subsequent payments of income (*Horn* v. *Coleman* (1856), 26 L. J. Ch. 213).

Where executors, through negligently mis-stating the relationship of the beneficiaries, paid too much duty, and the Crown later refunded the excess, the executors have been held, in Ireland, personally liable to the beneficiaries for interest (*Shaw* v. *Turbett* (1862), 14 Ir. Ch. 476; but *cf. Brown* v. *Smith* (1875), 46 L. J. Ch. 866).

As to legacies bequeathed free of duty, *see* pp. 351–355, and as to the adjustment of such legacies where the estate is deficient, pp. 385–386.

Funds in Court.

Where an action is instituted in any Court for the administration of a deceased person's estate, or of any property chargeable with Legacy Duty or Succession Duty which is under the control of the Court, provision is to be made by the Court for due payment of the duty, and no payment out of Court is to be made without due proof of the payment of such duty (L. D. A. 1796, s. 25, and S. D. A. 1853, s. 53). Under the Supreme Court Funds Rules, 1927, provision is made for the issue of a certificate by the Commissioners of Inland Revenue, when they are satisfied as to payment

of the duty, that they have no objection to the funds being dealt with as directed by the Order of Court (*see* Rules 20, 52 and 66, and pp. 312–313, *supra*). Where the Order directs duty to be paid out of the fund in Court, the duty is assessed in High Court cases on presentation of the accounts accompanied by the Order directing payment out, and a requisition is then sent to the Accountant-General of the Supreme Court under which a transfer of the amount payable is made from the fund in Court to the Inland Revenue account.

The Court will ordinarily concern itself only with the duties on transmissions from the original testator or intestate to the persons obtaining payment through the action before the Court: if those persons are trustees or personal representatives, the Court will not make enquiries as to duties for which they are or will be accountable, under subsidiary devolutions (*Ewing's Trustees* v. *Mathieson* (1906), 44 S. L. R. 12). The Court has also declined when ordering payment out of a settled legacy to the trustees of the will, to make provision for instalments of Legacy Duty, on the interest of the life tenant, which had not yet fallen due (*re Bowes, Strathmore* v. *Vane*, [1907] W. N. 198). On the other hand, where a life interest in a fund in Court, settled by deed, was released, it was held that unless Succession Duty was commuted (as the Court recommended) a sufficient sum must remain in Court to cover such duty (*Bayley* v. *Tindal* (1853), 2 Eq. R. 538). A similar course has been adopted with regard to Estate Duty (*Taylor* v. *Poncia*, [1901] W. N. 87).

Although in these cases the Court is required to provide for the duties, the executors are, nevertheless, bound to see that proper accounts are rendered and the duty paid, and if for any reason the Court omits to provide for the duty, the accountable parties (including

purchasers) are still liable to account to the Revenue (*Bryan* v. *Mansion* (1857), 26 L. J. Ch. 510; *A.-G.* v. *Chambres*, [1921] 1 K. B. 173). As to the position of the beneficiaries, *see* pp. 373–374, *supra*, and in particular *Foster* v. *Ley* and *Bowra* v. *Rhodes*. Solicitors who are acting for accountable parties are under an obligation to see that provision is duly made by the Court for payment of duty before payment of a legacy or fund out of Court is made (*Bryan* v. *Mansion, supra*).

For practice notes, *see* pp. 312–313, *supra*.

Payment into Court.

Where by reason of infancy, lunacy, absence beyond the seas, or a *bonâ fide* doubt as to the law, a legacy or residuary estate cannot be paid over by the executors, it is open to them after satisfying the claims for duty to discharge their liability to the legatee by paying the fund into Court (L. D. A. 1796, s. 32; Trustee Act, 1925, s. 63; *see* p. 313 as to form applicable). It can then only be dealt with by the proper person making formal application to the Court for payment out (*see* pp. 312–313 as to forms). The costs of paying a legacy into Court should be borne by the estate, but the costs of payment out of Court fall on the legacy itself (*re Cawthorne* (1843), 12 Beav. 56). Payment into Court in the case of an infant beneficiary will now be less frequent in England, for under the A. E. A. 1925, s. 42, where, without the intervention of trustees, an infant is entitled absolutely under a will or intestacy to a devise or legacy, residuary estate or a share thereof, the personal representatives may appoint trustees of such property for the infant, and on doing so are discharged from all further liability in respect thereof. Personal representatives are also indemnified in cases arising before the commencement of the Act for not making payment into Court (*ibid.*, sub-s. (2)).

Further, under the L. P. A. 1925, s. 21, a married infant has power to give receipts for income.

Limitation of Liability.

Where an executor, administrator or trustee has given notice in writing to the Commissioners for any claim to Legacy Duty in respect of any fund in his hands which he intends to distribute and has given them all the particulars they require, he may distribute the fund after satisfying any claim to duty and is entitled to a certificate discharging him from his liability to duty in respect of the fund; but the certificate is not to affect the liability of any person other than the person in whose favour it is expressed to be given (Customs and Inland Revenue Act, 1880, s. 12).

No person is liable for duty after six years from the settlement of the account in respect of which duty is payable where such account was a full and true one and contained all material facts. A trustee, executor, or administrator is similarly protected if it is proved to the satisfaction of the Commissioners that the account rendered was correct to the best of his knowledge, information and belief (Customs and Inland Revenue Act, 1889, s. 14). It should be noted that this provision does not apply unless an account has been delivered (*A.-G.* v. *Montefiore* (1909), 52nd Inland Revenue Report, page 85). If, therefore, an account has not been delivered before the time for payment in full of the duty has arrived, there will be no protection until an account has been delivered and six years have elapsed since an assessment of duty was made.

Subject as above, there is no limit of time to the liability for Legacy Duty, and any unpaid duty is a debt due to the Crown (*see A.-G.* (*I.*) v. *Lordan* (1906), 40 I. L. T. 98).

CHAPTER IX.

EXEMPTIONS FROM LEGACY DUTY.

(1) Gifts to the Royal Family.
(2) Specific legacies under £20 in value.
(3) Personal estate under £100.
(4) Free estate not exceeding £1,000.
(5) Free estate slightly exceeding £1,000: limitation of amount of Legacy Duty.
(6) Settled chattels until they come into the hands of a person competent to dispose.
(7) Books, prints, and articles of artistic or other special interest given to a body corporate.
(8) Similar articles given for national purposes.
(9) Similar articles certified by the Treasury to be of national, scientific, historic, or artistic interest, until sold, or when sold to certain public bodies.
(10) Money left to pay Legacy Duty.
(11) "Killed in War": conditional remission; and other military and naval exemptions.
(12) The estate of a person domiciled outside Great Britain.
(13) War securities held by foreigners.
(14) Legacies for charitable purposes in Ireland.
(15) Gratuities.
(16) Exemptions from the 1 per cent. rate only—£15,000 limit, etc.

1. The gift of a legacy or share of residue to or for the benefit of any member of the English Royal Family (*i.e.*, the descendants of George III, the reigning

sovereign when the exemption was enacted) is exempt from Legacy Duty (Stamp Act, 1815, Schedule).

2. Under the Stamp Act, 1815 (Schedule), any legacy, residue or share of residue under £20 in value was exempt from Legacy Duty. The Customs and Inland Revenue Act, 1881, s. 42, abolished this exemption in the case of a *pecuniary* legacy or a residue or share of residue. The exemption is still available in the case of (*a*) a *specific* legacy in the strict sense, such as a gift of "my bicycle" or (*b*) a *general* legacy which is not a *pecuniary* legacy, such as a gift of "a bicycle" —which the executors may have to purchase. A *demonstrative* legacy of money, such as a gift of "£10 cash to be raised out of my Victory Bonds," must be regarded as pecuniary.

The exemption does not apply where the legatee receives some other benefit from the personal estate which together with the value of the specific bequest raises the total benefit to £20 or over. For instance: *A* by will gives to *B* £5 and his piano, worth £10. No Legacy Duty is payable on the piano, as the total benefit to B is under £20. But if the specific legacy had been worth £15 Legacy Duty would have been payable on both bequests. If two specific bequests, each under £20, but together exceeding that value, were given to the same legatee, both would be liable to Legacy Duty. The exemption still applies even though the beneficiary is given an interest in real estate and leaseholds, as well as a specific bequest under £20 in value, as the former benefit is a succession and liable to Succession Duty.

If a legatee takes an immediate specific bequest under £20 in value and a future pecuniary benefit (as, for instance, on the death of a life tenant) Legacy Duty is payable on the specific bequest if the then total value is £20 or over.

However many specific bequests were made by the testator to different legatees, they would all be exempt if each were under £20 in value. For instance, where A is managing director of a limited company and by his will gives to each of the employés a £10 fully-paid share worth par, no Legacy Duty is payable, as the bequest to each employé is specific and under £20 in value.

3. Where the whole of the deceased's personal estate does not amount to £100, Legacy Duty is not payable (Customs and Inland Revenue Act, 1880, s. 13). The exemption strictly only applies where the gross value does not amount to £100, but in practice duty is not claimed where the net amount, after deducting debts and funeral expenses, is under that sum. The exemption applies even where there is real estate which raises the total estate to over £100, and in such a case, where the testator directs his real and personal estate to be sold, Succession Duty is payable (subject to any express exemption) on the proportion attributable to the real estate and the remaining proportion goes free of duty.

4. Where the net value for Estate Duty, exclusive of property settled otherwise than by the will of the deceased, does not exceed £1,000, Legacy Duty is not payable under the will or intestacy of the deceased (F. A. 1894, s. 16 (3)). This exemption applies to all rates and not merely to the 1 per cent. rate. It does not apply to property settled otherwise than by the will of the deceased, even if the value of such property together with the free estate does not exceed £1,000, nor does it apply unless Estate Duty is payable on the death of the deceased in respect of the property in question. As to what properties passing on the death of the deceased make up the estate not exceeding £1,000, *see* pp. 125–128).

5. A further provision in relief of small estates which exceed £1,000 was introduced by the F. A. 1914, s. 13 (2). Where the net value for Estate Duty, exclusive of property settled otherwise than by the will of the deceased, exceeds £1,000, the amount of Legacy and Succession Duty is limited to the amount of such excess. The amount of both Legacy Duty and Succession Duty has to be taken into account. For instance, suppose on the death of *A* his net free estate amounted to £1,050, including personal estate £600 and real estate £450. The beneficiaries are strangers in blood, and therefore the duty would be as follows:—

	£ s. d.
10 per cent. Legacy Duty on personal estate after deducting Estate Duty and testamentary expenses (say) ...	56 4 0
10 per cent. Succession Duty on real estate after deducting Estate Duty	43 13 0
Total ...	£99 17 0

But this sum is greater than the amount (£50) by which the net estate exceeds £1,000, and therefore the correct sum payable for Legacy and Succession Duty will be £50. Unless one person takes the whole estate, the abated duty will have to be apportioned rateably between the real and personal estate and between all the beneficiaries, including specific and pecuniary legatees (unless the legacies are given free of duty). For the purpose of this relief the net value of the estate for Estate Duty is the basis, *i.e.*, the net value as shewn by the Inland Revenue Affidavit. In connection with this abatement the corresponding limitation of Estate Duty where the excess over the next step in the scale is small should be noted (*see* pp. 117–119).

6. Plate, furniture, or other things not yielding income and settled upon persons in succession are not

liable to duty while enjoyed in kind by a person not having power to dispose (L. D. A., 1796, s. 14). Thus, if *A* gives his furniture to *B* for life, then to *C* for life, and then to *D* absolutely, Legacy Duty is not payable until the death of the survivor of *B* and *C*. If, however, the chattels are sold or dealt with during the life of the limited owner, whether the transaction is carried out with or without proper authority, Legacy Duty becomes payable at once (*see A.-G.* v. *Bruce*, [1901] 2 K. B. 391). It should be borne in mind that articles that are consumed by use cannot be settled, and where a testator purports to bequeath them in succession, they vest absolutely in the first life tenant and duty is payable at once. The Legacy Duty on settled chattels is payable by the person for whose benefit the sale is made, or who has power to sell, or who has an absolute interest therein (L. D. A. 1796, s. 14). The property must be valued for duty as at the date when the duty becomes payable (*A.-G.* v. *Rudge*, [1928] 2 K. B. 515).

Chattels of national, scientific, historic or artistic interest do not now come within this exemption, but are separately provided for (*see* No. 9 below).

7. Books, prints, pictures, statues, gems, coins, medals, specimens of natural history or other specific articles bequeathed to a body corporate for preservation and not for sale are not liable to Legacy Duty (L. D. A. 1799, s. 1, and Schedule to Stamp Act, 1815). This exemption is extended in practice to gifts to trustees for public purposes of bodies which are not incorporated and to other gifts of specific articles to the nation.

8. The Treasury is authorised to remit the duty in respect of any such pictures, prints, books, manuscripts, works of art or scientific collections, as appear to the Treasury to be of national, scientific or historic interest,

and to be given or bequeathed for national purposes or to any university, county council or municipal corporation (F. A. 1894, s. 15 (2); pp. 263–264, *supra*).

9. Pictures, prints, books, manuscripts, works of art, scientific collections, or other things not yielding income which appear to the Treasury to be of national, scientific, historic or artistic interest are not chargeable with Legacy Duty while enjoyed in kind, whether settled or not, but should they at any time be sold, Legacy Duty is payable on the proceeds, and the person selling or for whose benefit the objects are sold is accountable (F. A. 1930, s. 40—replacing, as regards deaths on and after 1st August, 1930, the F. A. 1896, s. 20, F. A. 1910, s. 63 and F. A. 1921, s. 44; replacing also, as regards chattels within this exemption, the L. D. A. 1796, s. 14). An account is to be delivered within one month of the sale. Costs of sale may be deducted, as well as the Estate Duty. An absolute exemption from duty is given if the sale is to certain public bodies. *See* also pp. 264–266, where the provisions are more fully discussed in connection with the corresponding exemption from Estate Duty.

10. Money left to pay Legacy Duty is not itself chargeable with Legacy Duty (L. D. A. 1796, s. 21). This exemption covers the Legacy Duty on all legacies directed to be paid free of duty. In effect, such direction is a further legacy of the amount of the duty, and, but for this exemption, Legacy Duty would have been chargeable. So also where a fund is directed to be set aside for payment of Legacy Duty the sums so applied are not to be charged with Legacy Duty.

Where real estate is given free of duty, Legacy Duty is chargeable on the Estate Duty and Succession Duty payable in respect of such property, as in effect the direction amounts to a bequest to the devisee of the amount of the Estate Duty and Succession Duty

(*cf.* A. E. A. 1925, s. 55 (1) (ix)). Similarly, if the testator makes a gift within three years of his death, and by his will directs that any duty thereon shall be paid out of his estate, Legacy Duty is payable on such duty, as the direction constitutes a legacy to the donee of the amount of the duty on the gift. This principle applies in all cases where the Estate Duty or Succession Duty, which is directed to be paid, would not otherwise be borne by the personal estate.

Any duties which fall to be paid out of the residuary estate, under a direction in the will, may be deducted in the residuary account.

Where legacies are given free of duty and the estate is not sufficient to pay them in full so that they have to abate rateably, the duty is necessarily payable out of the legacies themselves and this exemption does not apply (*re Turnbull, Skipper* v. *Wade,* [1905] 1 Ch. 726). The Legacy Duty in such cases must be paid out of each legacy as abated.

Where legacies or some of them are given free of duty and the estate is insufficient, the proper course is to apportion the assets between the legacies given free plus the duty thereon and the legacies not given free, leaving each legacy to bear its own duty. Thus, suppose the available assets amount to £1,100 and legacies are given as follows:—

	£
£1,000 to a nephew, free	1,000
Duty thereon at 5 per cent.	50
£500 to a stranger, free	500
Duty thereon at 10 per cent.	50
£600 to a charity, not free	600
Total legacies and duties to be paid out of residue	£2,200

The residue of £1,100 is divisible as follows:—

		£
$\frac{1050}{2200}$	of £1,100 to the nephew ... ... (out of which the Revenue would be paid £26 5s.)	525
$\frac{550}{2200}$	of £1,100 to the stranger in blood ... (out of which the Revenue would be paid £27 10s.)	275
$\frac{600}{2200}$	of £1,100 to the charity ... ... (out of which the Revenue would be paid £30)	300
	Total ...	£1,100

Where the abated amount of the legacy given free of duty, plus the abated amount of the duty together exceed the nominal amount of the legacy itself no Legacy Duty is chargeable on the excess over the amount of the legacy given free of duty.

11. In the case of persons killed during the Great War no Legacy Duty was payable where the value of the property passing to the widow, lineal descendants, lineal ancestors, or brothers or sisters or their descendants, did not exceed £5,000 (Death Duties (Killed in War) Act, 1914, s. 1 (1) (*a*), as extended by F. A. 1917, s. 29, F. A. 1918, s. 44, and F. A. 1919, s. 31), and where the property so passing exceeded that sum, the first £5,000 was free of Legacy Duty, and the Legacy Duty (if any) on the rest was discounted for the period the deceased would have lived if he had enjoyed the normal expectation of life (Death Duties (Killed in War) Act, 1914, s. 1 (1) (*b*)).

Further, if property passed more than once owing to deaths caused by the War, the whole of the Legacy Duty otherwise payable in connection with the second death was remitted, whatever might have been the relationship of the legatee and whether there was any relationship

between the deceased persons or not (Death Duties (Killed in War) Act, 1914, s. 2, and F. (No. 2) A. 1915, s. 46).

The remission under these provisions has been extended by F. A. 1921, s. 43, to certain specified persons dying after 31st December, 1918, from causes arising out of the then state of disorder in Ireland. A further extension of this remission (except that provided for in s. 2 of the Death Duties (Killed in War) Act, 1914) has been made by F. A. 1924, s. 38, as to members of the combatant forces dying after 31st August, 1921, from the causes specified while on active service or on service of a warlike nature, or which in the opinion of the Treasury involves the same risks as active service.

The "surplus," not exceeding £100, of property administered under the Regimental Debts Act, 1893, and the "residue," not exceeding £100, of property administered under the Navy and Marines (Property of Deceased) Act, 1865, are exempt from all death duties.

The estates of common seamen, marines, soldiers and airmen, who are slain or die in the service of His Majesty, are exempt from Estate Duty (F. A. 1894, s. 8 (1)). There is no express exemption from Legacy Duty under this head, but no Legacy Duty, from which the estate would have been exempted if Estate Duty had been paid, is claimed.

This group of exemptions is dealt with more fully in Chapter IV, Nos. 17, 18, 20 and 21.

12. Where the deceased died domiciled outside Great Britain (which does not include the Channel Islands, the Isle of Man, the Irish Free State or Northern Ireland), Legacy Duty is not payable on any of his personal estate (not including leaseholds), whether situate in this country or not (*Thomson* v. *Advocate-General* (1845), 12 Cl. & F. 1). The rule is that moveable property is considered to follow the person of the owner

and for the purposes of Legacy Duty is situated in the country in which he dies domiciled.

Domicile.

The domicile of a person is in general the place or country where he permanently resides or has his home or which is determined to be his permanent home by rule of law. His home is that place or country in which he resides with the intention of remaining permanently or with regard to which he retains intention though no longer in fact resident. If he has more than one residence his domicile is the place where he usually resides with his wife and family (*Forbes* v. *Forbes* (1854), Kay 341).

The domicile may be either a domicile of origin or a domicile of choice. The former is the domicile received by a person at his birth : viz., in the case of a legitimate child his father's domicile, or, in the case of an illegitimate child, his mother's domicile. This domicile is retained until such person acquires another by choice (*Winans* v. *A.-G.*, [1904] A. C. 287). A domicile of choice may be acquired by a person leaving the country or state of his domicile of origin and voluntarily taking up his abode in some other country or state with the intention of residing there permanently or indefinitely. So the domicile of a person born in England of parents domiciled there is *ipso facto* English, but if on attaining his majority he elects to emigrate to Australia and settles there with an intention of living there permanently and indefinitely, he loses his domicile of origin and acquires a domicile of choice in Australia. But if he afterwards decided to leave Australia, his domicile of origin would revive (*Udny* v. *Udny* (1869), L. R. 1 Sc. & D. App. 441), and if he died before acquiring a new domicile of choice his domicile at death would accordingly be English.

An intention to settle in a new country may change a domicile of origin even though naturalisation papers are not taken out. But a domicile of choice cannot be acquired merely by a declaration of intention, however clearly expressed. Neither is residence, however long its duration, sufficient in itself. Intention and residence must as a general rule both be present.

The residence must be freely chosen and not prescribed by necessity, such as the duties of office, the demands of creditors, or relief from illness, and must be general and indefinite in its future contemplation. So the residence of English officials abroad is not a fact from which a change of domicile can be inferred.

The domicile of a married woman is the same as that of her husband (*Lord Advocate* v. *Jaffrey,* [1921] 1 A. C. 146), and soldiers and sailors in His Majesty's Service retain the domicile they had on entering the Service, wherever they may be stationed (*ex parte Cunningham, in re Mitchell* (1884), 13 Q. B. D. 418).

There was formerly a presumption against the subject of a Christian country acquiring a domicile in a non-Christian country, but in view of the decision of the House of Lords in *Casdagli* v. *Casdagli,* [1919] A. C. 145, this presumption no longer holds and there is now no legal obstacle to a British subject acquiring a domicile of choice in any oriental country, provided the necessary conditions to establish such a domicile have been fulfilled.

As to domicile generally, *see* Dicey's Conflict of Laws, 4th edition, p. 74 *et seq.*

13. As noted on p. 236, the Treasury was empowered to issue war securities to be free from taxation so long as they are in the beneficial ownership of persons neither domiciled nor ordinarily resident in the United Kingdom (now Great Britain and Northern Ireland). In any

case, if the deceased was absolute owner and was not domiciled in Great Britain, the whole of his moveable estate would be exempt from Legacy Duty as already indicated. The exemption may come into play, however, on the death of a foreign life tenant under a British will, if the beneficiaries are also foreign.

14. Legacies given for the maintenance of poor children in Ireland or to be applied in support of any charitable institution in Ireland or for any purpose purely charitable are exempt from Legacy Duty (Stamp Duties (Ireland) Act, 1842, s. 38). The legacy must be charitable, though not necessarily for the relief of the poor, and given to an Irish Charity (*A.-G.* (*I.*) v. *Hope* (1868), 2 Ir. R. C. L. 368), by the will of a testator whose domicile is in Ireland. A legacy for purely private religious purposes would not be exempt (*A.-G.* (*I.*) v. *Delaney* (1876), 10 Ir. R. C. L. 104), although it has been decided that a bequest for masses in perpetuity in Ireland is a good charitable gift whether there is a direction that the masses should be celebrated in public or not (*O'Hanlon* v. *Logue,* [1906] 1 I. R. 247, which partly over-rules *A.-G.* v. *Delaney,* mentioned above). This exemption does not now affect the duties payable to the British Exchequer.

15. Voluntary payments to the representatives of a deceased person are not chargeable with Legacy Duty, even if they fall to be distributed under his will or intestacy (*see* p. 262, No. 22).

16. Prior to the F. A. 1910, no Legacy Duty was payable in any circumstances by the husband or wife of the testator or intestate, no rate being prescribed. The duty is now payable by the husband or wife only where the testator or intestate died on or after the 30th April, 1909, and the limits of £15,000 and £1,000 or £2,000 are exceeded.

Subject to the F. A. 1910, lineal issue and lineal ancestors (and their husbands and wives) are exempted from Legacy Duty where—

(1) Probate Duty, Inventory Duty or Account Duty has been paid on the property on or after the 1st June, 1881 (Customs and Inland Revenue Act, 1881, s. 41), *or*

(2) Estate Duty has been chargeable on the property (F. A. 1894, s. 1), *or*

(3) Estate Duty has been paid on the property during the currency of the settlement (F. A. 1894, s. 5 (2)).

In cases (1) and (2) the duty must have been paid or chargeable in connection with the death of the testator or intestate, but such payment or charge covers any Legacy Duty at 1 per cent. under the will, on the death of a life tenant as well as on the testator's own death. The chief instance of Estate Duty being *chargeable,* though not *paid,* is the estate of a common seaman or soldier, killed or dying on service (p. 387). In case (3) the duty may have been paid on any death: payment of Estate Duty in a reversioner's estate secures exemption from Legacy Duty at 1 per cent. on the life tenant's death under the old will.

One case, which fails to benefit by these exemptions and still occasionally occurs, may be exemplified. *A,* who died before the Customs and Inland Revenue Act, 1881, gave his personal estate to his widow *B* for life, with remainder to his children. On *B's* death in 1930 Legacy Duty at 1 per cent. is payable. The Probate Duty paid on *A's* personalty was not paid under the last-mentioned Act, but it involves exemption from Estate Duty on *B's* death (F. A. 1894, s. 21 (1)). There is consequently nothing to displace the charge of Legacy Duty under the L. D. A. 1796, and the amending Acts. It makes no difference that *A's* estate may have been under £15,000,

or that the benefit to each child may not exceed £1,000. These limits are applicable only to cases where the testator or intestate dies after the commencement of the F. A. 1910. If one of the children had predeceased the widow and Estate Duty had been paid on his reversionary interest, *his* share would have been exempt from Legacy Duty under his father's will by virtue of the F. A. 1894, s. 5 (2). Legacy Duty at 1 per cent. may also be payable in the estate of a reversioner to whom a grant of representation or Confirmation was obtained before the 1st June, 1881, in respect of a reversion falling into such estate.

The 1 per cent. duty was in effect re-imposed on issue and ancestors, and at the same time extended to husbands and wives, by the F. A. 1910, s. 58; but, provided that Estate Duty has been paid, it is chargeable only where—

(1) the testator or intestate dies on or after the 30th April, 1909, *and*

(2) the principal value of the property passing on the death of the testator or intestate, in respect of which Estate Duty is payable, exceeds £15,000 —various kinds of property not being taken into account, *and*

(3) the total individual benefit taken by the beneficiary from the same testator, intestate or predecessor, whether as legacies or successions, exceeds £1,000, or in the case of a widow or infant child, £2,000.

The 1 per cent. duty is payable only if all three conditions are satisfied. Conditions (2) and (3) have no reference to duty payable at other rates.

The exemption from the 1 per cent. Legacy Duty where Estate Duty has been paid applies not only to absolute bequests but also to settled legacies and residues. Once it has been established that the £15,000

limit is not exceeded, the subsequent death of a life tenant entitled under the will does not give rise to any claim for the 1 per cent. duty, even though on his or her death property liable to Estate Duty passes and exceeds £15,000 in value. Conversely, if it was found that the £15,000 limit was exceeded, and Legacy Duty at 1 per cent. was chargeable, the fact that on the death of a life tenant the property passing for Estate Duty does not amount to £15,000 will not affect the liability to further Legacy Duty at 1 per cent. under the original will.

The £15,000 and £1,000 or £2,000 limits, which depend upon questions of Succession Duty as well as Legacy Duty, are discussed in a later chapter (pp. 520–529).

CHAPTER X.

LEGACY DUTY.—PRACTICE.

The value of a settled fund for Legacy Duty is its value at the time the duty becomes payable, *i.e.*, upon payment or other satisfaction of the legacy or on retainer for the benefit of the persons entitled (L. D. A. 1796, s. 13).

In the case of a residue, the duty is calculated on the value when payment is made to the persons entitled or the property is retained upon trust (*ibid.*, s. 6). In practice, unless otherwise stated or unless considerable time has elapsed since the death, such payment or retainer is deemed to take place at the date of the residuary account.

English executors have a year in which to get in the estate and pay legacies and distribute the residue (A. E. A. 1925, s. 44).

In defining the relationship of a legatee, indefinite terms like "nephew," "niece," or "cousin" should not be used. The correct terms as defined by the Act are given on the various forms of account. For instance, the description of a "nephew" or "niece" is a "descendant of a brother of the deceased" or "descendant of a sister of the deceased."

Legacies.

The duty on legacies is accounted for on *Form No.* 1, which should give the names of the beneficiaries, their relationship to the testator or intestate, and the amount of the bequest.

If pecuniary legacies are accounted for within a year, no interest is charged on the duty, otherwise interest is charged from one year from the death. If, however, payment of a legacy is made, whether within the year or not, and the duty is not accounted for within twenty-one days, the executors become liable to penalties (L. D. A. 1796, s. 28), but in practice, unless there has been wilful neglect, the penalties may be waived on payment of interest on the duty from the date of payment of the legacy.

In the case of specific legacies the value at the date of transfer or delivery should be accounted for, including, in the case of a legacy which bears income, the accrued income or profits to that date.

Thus, if the specific legacy is of stocks or shares in a company they should be accounted for at their market value at the date they were transferred to the legatee, with all accrued dividends to that date. The same applies to a bequest of a mortgage debt, share in a business, etc.

Annuities.

Where Legacy Duty is chargeable by way of annuity (L. D. A. 1796, s. 8), it should be accounted for on *Form No.* 2, which, in addition to the particulars given above, should show the date of birth of the annuitant. Where the annuity or income is payable from the testator's death, the account is assessed on the basis of the completed age of the annuitant at that date.

The duty may be paid at once, in which case discount for two and a half years, less the time which has elapsed since the testator's death, will be allowed; or it may be paid by four equal yearly instalments, the first of which is payable at the end of the first year from the death, *i.e.*, if payment of the first year's annuity is completed by then. In strictness, the first instalment becomes

payable before or on completing payment of the first year's annuity or income, so that where a legacy is settled upon trust for a person for life and the executors require a year in which to get in and invest the estate, the first instalment of Legacy Duty on the life interest may not become payable until the end of the second year.

The two and a half years referred to above is an average arrived at as under:

1st instalment of duty due at end of				1	year	from death
2nd	,,	,,	,,	2	years	,,
3rd	,,	,,	,,	3	,,	,,
4th	,,	,,	,,	4	,,	,,
			Total ...	10		

Average period: two years and six months.

Where there is a direction to purchase an annuity of a fixed amount the duty is payable in full on the value according to the tables and cannot be paid by instalments. The sum actually paid for the purchase of the annuity may be deducted in the residuary account. The annuity to be purchased is the amount given by the will, less duty at the proper rate (L. D. A. 1796, s. 10). Thus if *A* directs the purchase of an annuity of £20 for his servant *B*, aged sixty, the value of the annuity according to the tables, viz., £194 8s. 2d., is first ascertained and duty paid at the rate of 10 per cent.: viz., £19 8s. 9d. The annuity to be purchased is £20, less 10 per cent.=£18. Where the annuity is given free of duty, the whole annuity, without reduction, should be purchased.

Residuary Account.

Having accounted for Legacy Duty on the legacies, got in the estate, and paid the debts, the next step is to render a general account showing what the residuary

estate amounts to. *Form No.* 3 in duplicate should be used for this purpose. As already stated, it should show the value of the residuary estate at the date when it is paid over to the residuary legatee or, if settled, the date when it is retained upon trust. This date, where there has been no undue delay, is in practice taken as the date of the account, because no distribution should be made until the duty has been accounted for: otherwise penalties are incurred (L. D. A. 1796, ss. 27, 28 and 29).

Two columns are given in the account—one for assets which have been realised and one for assets not realised and investments made since the death of the deceased. In the former, the actual gross proceeds of sale should be included: in the latter, the assets should be included at their value at the date of the account. This value is not necessarily the same as for Estate Duty, as there may have been a variation in value since the testator's death.

In the case of property not realised and investments made since the death of the deceased, the accounting parties should set a value thereon (L. D. A. 1796, s. 22). Should the Commissioners not be satisfied they may appoint a person to value the property, and the executors, if they consider such value excessive, have rights of appeal. The Commissioners may also value the property or cause a valuation to be made in case there is any dispute between the persons entitled and the executors.

In ordinary cases where the amount involved is small, an estimate by the accountable parties is sufficient, but in other cases a professional valuation may be necessary. It need not be stamped unless intended to be used for other purposes and it should be filed with the account. In general the same principles should be applied in arriving at the value of unsold property for Legacy Duty as for Estate Duty. The only difference is that the

date for valuing is the date of the account and not the date of death.

Deductions may be taken in the residuary account as follows:—

(1) Estate Duty and interest thereon, excluding Estate Duty on real estate not included in the account, but including Estate Duty on leasehold property. Real estate and leaseholds devolving under an intestacy or given upon trust for sale as part of the residuary estate may be included in the residuary account (although the duty payable is, strictly speaking, Succession Duty), and in that case the Estate Duty paid on the real estate may be deducted. If unsold, the Estate Duty value for real estate and leaseholds may be accounted for, but if in the course of administering the estate a sale has taken place, the sum realised should be accounted for, whatever may have been the value for Estate Duty.

The Estate Duty in respect of property on which it is a charge is not a good deduction in a residuary account, unless either (*a*) the property is included in the account, or (*b*) the property is given free of duty by the will, or (*c*) there is an express direction in the will to pay such Estate Duty. This applies to the free real estate, free personal estate outside Great Britain, and personal property over which the deceased exercised a general power of appointment by his will, as well as to gifts *inter vivos*, settled property, etc. (*see* pp. 207–227).

In the same way, Succession Duty can be deducted only if it was paid on real or leasehold property specifically devised free of duty by the will or was expressly directed to be paid out of

the residuary estate. As previously mentioned, any Estate Duty or Succession Duty payable out of residue in respect of other property is liable to Legacy Duty as a legacy to the persons who benefit by the freedom from such duties.

(2) Court fees on obtaining probate.

(3) Funeral expenses as in the Inland Revenue Affidavit. The amount should be reasonable having regard to the position and means of the deceased.

(4) Debts as in the Inland Revenue Affidavit and also voluntary debts which the executors are legally liable to pay, though (not being for full consideration in money or money's worth) they were not deductible against the value for Estate Duty.

(5) Testamentary expenses. These include cost of administration and winding up, including the capital fees of the Public Trustee or a trust company or corporation in cases in which they are concerned, cost of valuation, brokers' fees, expenses of sale, and expenses of carrying on the deceased's house until it can be closed. Where, however, the house is carried on longer than is strictly necessary for the purpose of administering and is occupied beneficially by relatives, such extra expense is not a good deduction. Where the tenancy has not expired and the executors are unable to re-let the house and the landlord accepts a surrender on payment of a lump sum, such sum and also rent payable up to that date may be deducted.

(6) Where the deceased's will expressly directs a tombstone to be erected over his grave, the cost thereof may be deducted and a deduction for mourning for servants and family may in

practice be allowed, provided such expenditure is reasonable having regard to the deceased's position and the amount of his estate.

(7) Legacies and, where they are given free of duty by the will, the duty thereon.

(8) Amounts, if any, expended in investments since the death of the deceased.

On page 3 of the account should be included all income (less Income Tax) received between the date of the death and the date of the account, and an apportionment of all income to that date (p. 344, *supra*). Thus mortgage interest, profits of business and rents of real estate included in the account, should all be apportioned so that the account shows the exact position of the estate with all accretions to date. In the case of a farm tenancy which is wound up, the amounts realised by the sale of the stock and for the tenant right should be accounted for, while the costs of carrying on the farm until the undertaking is wound up may be deducted. From the total income of the estate may be deducted payments to the date of the account in respect of any annuities given by the will, apportioned interest on mortgages of real estate included in the account, interest on legacies where, for any reason, interest is payable (*e.g.*, where they are given by the will with interest, or payment is not made until more than a year after the death, or where by law they carry interest from the death).

Finally, if annuities are given by the will and the annuitants are in ordinarily good health (as to which a signed statement by a person having knowledge of the facts should be supplied), the value of their annuities will generally be allowed as a deduction and in such cases no further Legacy Duty becomes payable on the deaths of the annuitants. The deduction should be the value for the completed age of the annuitant at the date of the account and not at the date of death. Where the

deduction of the value of the annuity or annuities would absolutely exhaust the residue, the practice of allowing the deduction of the value would not be permitted (*see also* p. 363). If the value is not deductible, the strict course should be followed and the capital set aside for the annuity or a portion of the estate sufficient to produce the annuity should be deducted, and on the death of the annuitant a supplementary account on *Form No.* 3–1 (England) or 3A (Scotland) in duplicate should be rendered for Legacy Duty on the then capital value of the property so deducted, less any further Estate Duty payable in connection with the annuitant's death.

After all proper deductions have been made in the residuary account, Legacy Duty is charged on the balance—

(*a*) Where the residuary legatees take absolutely, or

(*b*) Where the residue is settled and all the legatees are liable to the same rate of duty.

If there has been any considerable delay between the date of the account and the date when it is ready for assessment, interest on the duty is charged for such period, and if, prior to the date of the account, advances have been made to the residuary legatees on account of their shares, interest on the duty on such advances is charged from the date when they were made.

Where the life tenant and those entitled on his death are liable to different rates, duty must be paid in the first instance by way of annuity. In that case a similar No. 3 account is rendered, except that no payments that are a charge on income should be deducted, such as interest on Estate Duty or Legacy Duty, and also that income since the death should not be accounted for. To the No. 3 account should be annexed a No. 2 account as used for ordinary annuities. This account should

show the net annual income produced by the trust estate. The actual income produced by the unrealised assets should be accounted for. The cash balance, and any property of value but not for the moment producing income, may be accounted for at $4\frac{3}{4}$ per cent. interest (*see also* p. 361). In no case should any deduction be taken for Income Tax. The value of the life interest and the amount of duty thereon is then calculated in the same way as for an ordinary annuity and is payable by the same instalments and is subject to the like conditions as to discount and cesser of instalments not due in the event of the life tenant dying.

Legacy Duty on a Life Tenant's Death.

Where Legacy Duty becomes payable on the death of a life tenant, annuitant, or other limited owner, *Form* 3–1 (England) or 3A (Scotland) in duplicate should be used. As a general rule it should show the value of the trust fund at the date of the death of the life tenant or annuitant, less costs of division and any further Estate Duty then payable. Income since that date should not be included and the investments should be valued at that date without regard to the prices they may have realised on a subsequent sale. Interest on the duty is charged from the death of the life tenant or annuitant.

Reversions.

Where a reversionary interest is given as a legacy or included in a residuary estate and the executors wish to dispose of their future liability for Legacy Duty, they are in general permitted to do so provided the life tenant is in ordinarily good health. In such a case they should account for the value of the interest at the date of the account. Thus, suppose *A* is entitled to a fund on the death of *B* and he predeceases *B*, giving the reversion to his nephew *C*. At the date of the account the value

of the investments representing the fund is £500, the age of the life tenant sixty, and the income £25:

	£	s.	d.
Present value	500	0	0
Less value of £25 per annum for a life aged 60	243	0	3
Value on which Legacy Duty is payable	£256	19	9

The account should be based on the completed age of the life tenant at the date of the account. If the reversion might fall in on the happening of some other event than the death of the life tenant (as, for instance re-marriage or bankruptcy) only a proportion of the value of the life interest may be allowed, as noted in the case of Estate Duty (*see* p. 310).

If, after the residuary account has been disposed of, the parties wish to pay the Legacy Duty on a reversionary interest, it may be accepted by the Commissioners by way of commutation, provided the life tenant is in ordinarily good health. In such a case the duty is ascertained as follows:—

	£	s.	d.
Present value of the investment, say	500	0	0
Duty thereon at 5 per cent.	25	0	0
Present value of such duty on death of life tenant, aged 60, on a 4 per cent. basis	14	19	7

If the reversion may fall in earlier (as on re-marriage or bankruptcy, alienation, etc.), the allowance for the life interest would be reduced as already noted. So also if the health of the tenant were precarious, the allowance for his life interest would be subject to reduction as determined by the Commissioners, or they might in such a case refuse to accept duty in advance.

Where the free estate exceeds £1,000, the amount of Legacy and Succession Duty is not to exceed the amount of such excess (F. A. 1914, s. 13 (2), and *see* p. 382). If it is clear that the whole of the excess over £1,000 will be payable for Legacy and Succession Duty, separate accounts are not required and the duty will be assessed at the amount of the excess. Thus, if the deceased's free estate is £1,020 and is given to nephews and nieces, it is obvious that the full amount of Legacy and Succession Duty would exceed £20, and therefore such duties are assessed at £20 in a lump sum on a form prepared in the Estate Duty Office without the necessity for separate Legacy Duty or Succession Duty accounts. It will, however, be necessary for the accountable parties to apportion the abated duty rateably between the various beneficiaries except those whose benefits are given free of duty.

Corrections.

Where after Legacy Duty accounts have been rendered it is found that they are incorrect they should be adjusted as follows: where the value of a legacy or residue is under-estimated owing to an asset being omitted or under-valued, a supplemental account on *Form No.* 1 in duplicate for the additional duty should be rendered. If a legacy or residue was over-estimated, application for return should be made on *Form* H (England) or T (Scotland), duly sworn by the executors and accompanied by the original stamped account. If the relationship was given incorrectly and a different rate of duty is payable, a fresh account for the whole duty should be rendered showing the correct relationship. The duty already paid will be appropriated in satisfaction or part payment and any balance returned.

Where duty on an annuity or life interest is paid in advance under discount and the annuitant or life tenant

dies before all the instalments of duty have become due, application for return should also be made on *Form* H or T, accompanied by the stamped account. Evidence of the death, such as a death certificate or production of the probate of the will of the deceased beneficiary, may also be required. If in such a case the full value of the annuity was deducted in the residuary account it may also be necessary to adjust such deduction.

(*See also* observations on pp. 538–539 as to correction of Succession Duty.)

When all the accounts have been rendered, and before finally distributing the estate, application should be made to the Estate Duty Office for an assurance that all claims of the Revenue have been met. It is the practice of the Office to bring outstanding claims for duty to the notice of the accountable parties, but they are under no statutory obligation to do this and the accountable parties in their own interests should satisfy themselves by enquiry that there are no outstanding claims for duty.

Where interest on Legacy Duty is chargeable, the rate since 31st July, 1919, is 4 per cent. (F. A. 1919, s. 30). As to payment of interest by the Crown on duty returnable, the observations on p. 306 apply equally to Legacy Duty.

The values of annuities and life interests are to be calculated in accordance with the tables in the S. D. A. 1853. For Table I, *see* p. 566.

As to the method of rendering accounts and paying the duty when assessed, including payment by transfer of war securities, and as to the forms of certificate for payment in and payment out of Court, *see* notes on Estate Duty Practice, pp. 312–313 and 318–322.

All the English forms of Legacy Duty accounts may be obtained from the Controller, Estate Duty Office, Somerset House, W.C.2, on personal application or by letter, and, except *Form* H, they may also be obtained on personal application at Head Post Offices outside the Metropolitan Postal District and at the Throgmorton Avenue Post Office, London Wall, E.C.2.

Forms for use in Scotland may be obtained from the Registrar, Estate Duty Office, Edinburgh, on personal application or by letter, and, except *Form* T, they may also be obtained on personal application at authorised Stamp and Post Offices in the country.

PART III.

SUCCESSION DUTY.

Succession Duty was first imposed by the S. D. A. 1853, and is therefore of more recent origin than Legacy Duty. It is a tax on the gratuitous acquisition of property on a death. The person from whom the property is derived is termed the "predecessor," the beneficiary is termed the "successor," and the property he derives is said to be a "succession." The rates of duty depend on the relationship of the successor to the predecessor and, in the case of first successions since the F. A. 1910, are—1 per cent. for lineal issue, lineal ancestors, wives and husbands; 5 per cent. for brothers and sisters and their descendants; and 10 per cent. for all other relations, strangers in blood and charities.

Succession duty differs from Legacy Duty in that the former duty may be payable under deeds and other instruments as well as under wills and intestacies, while Legacy Duty arises solely under wills and intestacies (except in the case of *donationes mortis causa*). Legacy Duty also is confined to personal property (excluding leaseholds), while Succession Duty is payable on real estate and leaseholds, and also on personal estate (not including leaseholds) except where Legacy Duty is chargeable. Legacy Duty, again, is not payable under a will where the domicile of the testator is foreign, but Succession Duty may in such case be payable where the property is settled and it would be necessary to resort to the Courts of this country to execute the trusts.

Before the F. A. 1894, Succession Duty was, in the case of real estate, payable on the value of the interest of the successor whether he were merely life tenant or absolute owner, calculated as an annuity according to the tables given in the S. D. A. 1853. But since the Act of 1894, where the successor is competent to dispose, the duty is calculated on the capital value of the property itself, as for Estate Duty (F. A. 1894, s. 18).

The text of the Acts relating to Succession Duty is given in the Appendix, commencing p. 554.

Following the arrangement adopted in the case of Estate Duty and Legacy Duty, Succession Duty will be considered under the following heads:—

1. The Property upon which it is Payable.
2. The Rates and Amount of Duty Payable.
3. The Persons Accountable and Incidence of the Duty.
4. Exemptions.
5. Practice.

CHAPTER XI.

THE PROPERTY UPON WHICH SUCCESSION DUTY IS PAYABLE.

Succession Duty is chargeable under every transfer on death by which a person becomes gratuitously entitled to property (S. D. A. 1853, s. 2).

The person from whom the succession is derived is termed the "predecessor," the person taking the succession is termed the "successor," and the property taken is termed the "succession." The duty is payable, at a rate depending on the relationship of the successor to the predecessor, on all real and leasehold property and also on all personal property not liable to Legacy Duty.

For the purpose of Succession Duty the term "real property" includes freehold, leasehold and other hereditaments and heritable property, whether corporeal or incorporeal, in Great Britain (except money secured on heritable property in Scotland), and all estates in such hereditaments. The term "personal property" does not include leaseholds, but includes money payable under any engagement, money secured on heritable property in Scotland, and all other property not comprised in the above definition of real property (S. D. A. 1853, s. 1). For the purpose of this duty leasehold property is on the same footing as real property, although, for other purposes, it is personal property.

The three essential characteristics of a succession are—

(*a*) A disposition or devolution of property.

(*b*) A gratuitous acquisition.

(*c*) A death on which the property or the title is transmitted.

Disposition or Devolution (and Predecessorship).

By a *disposition* is meant any act of the owner, whether by deed or other instrument created during his lifetime or by his will, under which an interest accrues on death. By *devolution* is meant the transmission by act of law of the interest of the owner on death.

Example of a disposition : *A* by deed settled £1,000 on himself for life and then on his niece *B* absolutely. On *A's* death Succession Duty is payable by B in respect of her succession to the £1,000 derived from *A* as predecessor under the disposition made by him.

Where mortgages on settled property are paid off by the tenant for life or are released by the incumbrancer for the benefit of the persons entitled under the settlement, the original settlor is still regarded as the predecessor for all purposes, including the enhanced value of the succession. The payment-off or release is not considered to be a substantive disposition within the meaning of the S. D. A. 1853, s. 2. The successor takes his succession under the original disposition and pays on the enlarged value simply because there is no longer any incumbrance to deduct. The benefactor can obviously make a new disposition if he wishes, but he must do so expressly.

Where a successor derives his succession from more predecessors than one and the interest derived from each cannot be distinguished, the Commissioners may agree with the successor as to the duty payable, and in default of agreement the successor shall be deemed to take equally from each predecessor (S. D. A. 1853, s. 13).

A devolution arises by act of law, as where a person dies intestate or a tenant in tail dies. Thus if *A* dies intestate, his real estate in England descends in accordance with the A. E. A. 1925, and the successors are liable to Succession Duty as on a succession by devolution from *A*.

The general rule is that in cases of devolution the last possessor is the predecessor, and the successor pays duty according to his relationship to him. Where the surviving spouse of an intestate takes a life interest under the intestacy, the original intestate is still the predecessor for the purpose of the further succession arising on the termination of such interest.

In the case of entailed property, each person expressly named in the entail, and also the first member of a new *stirps* or class, derives his title from the settlor and the rate of duty is determined by the relationship existing between them, but a successor who derives his title as being the next member of the same *stirps* or class as the person last entitled is treated as deriving his title by devolution from that person and not from the settlor, and pays duty according to his relationship to such person (*see Hamilton* v. *Lord Advocate*, [1920] A. C. 50).

A person who wrongfully takes possession of property on the death of the owner and obtains a title by adverse possession takes a succession by devolution from the person who was last in possession, and is liable to Succession Duty according to his relationship to such person.

The Court may declare that a disposition was fraudulent and made for the purpose of evading duty, and that a succession has been conferred on such person, at such time, and to such extent, as the Court thinks just (S. D. A. 1853, s. 8).

Where property already settled is dealt with by the tenant for life and remainderman, any dealing with the inheritance is a disposition by the remainderman alone. In the case of real property in strict settlement, which is disentailed, the predecessor for any succession arising on or after the life tenant's death is therefore the former tenant in tail in remainder

(*A.-G.* v. *Sibthorp* (1858), 3 H. & N. 424; *Braybrooke* v. *A.-G.* (1861), 9 H. L. C. 150; *A.-G.* v. *Floyer* (1862), 9 H. L. C. 477; *A.-G.* v. *Smythe* (1862), 9 H. L. C. 497; *A.-G.* v. *Cecil* (1870), L. R. 5 Ex. 263; *Charlton* v. *A.-G.* (1879), 4 A. C. 427). It follows that when the former tenant in tail becomes entitled to the property in possession under the re-settlement, he takes a succession under his own disposition: this is the subject of a special provision (pp. 471–472). Other persons either take new successions derived from the former tenant in tail, or take as his alienees (pp. 472–483). If, however, the life tenant acquires for valuable consideration the right to dispose of moneys charged on the inheritance, *he* is the predecessor as regards any new succession to such moneys (*A.-G.* v. *Yelverton* (1861), 7 H. & N. 306).

There are further special rules as to predecessorship in the cases of joint property (p. 418), policies (p. 420), and appointments under general powers (p. 424).

Gratuitous Acquisition.

The acquisition of the property by the successor must be beneficial and gratuitous. *Bonâ fide* transactions for consideration in money or money's worth do not attract Succession Duty as between the contracting parties (S. D. A. 1853, ss. 7 and 17; *Fryer* v. *Morland* (1876), 3 Ch. D. 675). So that if *A* for full consideration in money or money's worth sells a house to *B*, reserving to himself a life interest, no Succession Duty is payable by *B* on the death of *A*. It is not essential, however, that there shall have been *full* consideration, provided that there was a *bonâ fide* sale (*re Bateman, A.-G.* v. *Wreford Brown*, [1925] 2 K. B. 429). But to escape Succession Duty, the consideration must be money or money's worth. Marriage, though a valuable consideration, will not suffice (*Floyer* v. *Bankes* (1863), 3 De G. J. & Sm. 306); and where there are mutual

pecuniary contributions in a marriage settlement by the spouses or their relatives, the true consideration is the marriage, not the other contribution (*Lord Advocate* v. *Sidgwick* (1877), 4 Rett. 815). It has been held further that the *sole* consideration must be money or money's worth, and that if marriage forms any *part* of the consideration, the exemption does not apply (*A.-G. (I.)* v. *Rathdonnell*, [1896] W. N. 141).

By reason of the above rule, no Succession Duty is payable by the members of a tontine in respect of the benefits accruing from time to time on the deaths of other members (*Oldfield* v. *Preston* (1862), 3 De G. F. & J. 398).

Apart from marriage settlements, partial consideration in money or money's worth is treated as securing exemption *pro tanto*, and Succession Duty is claimed only on the balance of the benefit. Thus where *A*, on being taken into partnership with *B* in a business valued at £60,000, was given a one-third share, and it was agreed that in case *B* died *A* should become entitled to the whole capital on payment of £10,000 to *B's* executors, Succession Duty was held to be payable by *A* on the death of *B* on the value of *B's* share in the business, less the £10,000 (*Brown* v. *A.-G.* (1898), 79 L. T. 572). The same principle applies where a testator gives a beneficiary the option to purchase real or leasehold property forming part of the estate, at less than its full value. Where the consideration is merely something reserved out of the property, and the successor pays nothing out of his own pocket, he will not be relieved from duty. (*See* pp. 431–433, as to *Gifts with Reservation.*)

Transmission on Death.

The third requirement to attract Succession Duty is a *death* to which the successor's enjoyment of the

property, or his title to the property, is related. Section 2 of the S. D. A. (the main charging section) requires a death upon which the successor becomes beneficially entitled under a disposition (either immediately or after any interval, either certainly or contingently, and either originally, or by way of substitutive limitation) to any property or the income thereof, or upon which any beneficial interest in property or the income thereof devolves by law. Section 8 widens the meaning of *upon* the death by providing that where any disposition is made to take effect at a period ascertainable only by reference to the death of any person, such disposition shall be deemed to confer a succession on the person in whose favour it is made.

The expression "become beneficially entitled" has a two-fold meaning: the death may fix the date of entitlement or the date of possession. In the simplest case —an immediate devise by will—the successor gets the right and the enjoyment simultaneously. It is sufficient for the purpose of the Act, however, that the successor's enjoyment of the property depends on a death although his right thereto may have been acquired without any reference to death, as in the ordinary case where property is settled *inter vivos* on *A* for life with remainder to *B*. The requirement of the Act is satisfied equally if the successor has acquired with reference to a death a future interest in property, even though his enjoyment of the property does not depend directly on death. For example, if *C* settles real property by his will on his widow for life or widowhood, with remainder to *D*, and the widow re-marries, *D* takes a succession with reference to the death of *C*, deferred until the re-marriage. The liability here can be based either on *D's* entitlement immediately on *C's* death or on *D's* possession after an interval from *C's* death. The special type of case, where the death has no real relation to the date of possession,

but affects only the title, is dealt with further under the heading *Removal of an Obstacle* (p. 417).

Where a settlement *inter vivos* provided that each trustee for the time being should receive an annuity of £200 by way of remuneration, it was held that new trustees, appointed in the place of trustees who had died, did not, within the meaning of the S. D. A. 1853, s. 2, become entitled to their annuities on the deaths of the former trustees (or after an interval), and consequently that the annuities were not chargeable with Succession Duty (*A.-G.* v. *Eyres,* [1909] 1 K. B. 723). Estate Duty also was not payable, but for a different reason (p. 238).

Where a disposition purports to operate immediately, or in circumstances which would not confer a succession, but by reason of any enforceable secret trust or arrangement the property actually devolves on or with reference to a death, Succession Duty is payable (S. D. A. 1853, s. 8).

Once a Succession, always a Succession.

Although every claim for Succession Duty has to be referred to a death, the liability to duty comes into being as soon as a succession is conferred. Therefore any transaction (not being a sale), by which a person becomes prospectively entitled to property on or following a death, creates a charge of duty, which cannot be got rid of by any subsequent dealings with the property. "A succession within the Act once established, no manipulation of the parties afterwards can get rid of it" (per the Lord Chancellor in *Northumberland* v. *A.-G.*, [1905] A. C. 406). In the case of a deed the succession is conferred as soon as it is executed, and in the case of a will, on the death of the testator (*Lord Advocate* v. *Macalister,* [1924] A. C. 586). This statement is not affected by the question when the succession

arises for the purposes of the F. A. 1894, s. 18, and the F. A. 1910, s. 58 (as to which, *see* the F. A. 1925, s. 24; p. 444, *infra*).

There is one exception to the rule that a succession cannot be destroyed, viz., where the succession is defeated by a prior title. The leading case is *A.-G.* v. *Selborne*, [1902] 1 K. B. 388, where a father on the marriage of his son conveyed an estate to trustees to such uses as the father and son should jointly appoint, and in default of and until such appointment to the use of the father for life with remainder to the son in fee simple if he should survive the father. Later the father and son, in exercise of the power, appointed the property (with exceptions) to the son in fee simple, and shortly afterwards the father died. The Crown claimed that the effect of the appointment was merely to *accelerate* the succession (S. D. A. 1853, s. 15; pp. 483–485, *infra*), but the Court held that the effect was to annul and defeat altogether the succession conferred by the other limitations and to substitute for it the estate created by the appointment—which must be read back into the conveyance. It is important to observe that the principle does not apply to appointments under the ordinary joint power in a re-settlement by tenant for life and remainderman: *ex hypothesi* the succession of the remainderman has been conferred before the power is created. Other examples of the destruction of a succession by a prior title are (*a*) the sale of a testator's real property by his executor for the payment of debts, so that the devisee gets nothing, and (*b*) the severance of a joint tenancy.

Reference may be made in connection with this heading to the following further points:—

(1) A succession is not destroyed by the sale or alienation of the succession or even of the property as a whole (pp. 472–473 and 480–481),

though the *purchaser* may take free from the charge (pp. 501–507).

(2) A succession is not destroyed by taking the property out of settlement: this usually involves only *acceleration* (pp. 483–485).

(3) No deduction is allowed for charges created by the successor (pp. 467–468).

(4) An expectant successor *can*, by settling his reversionary interest on himself for life, cut down his succession to a life interest for the purpose of taxation (pp. 453 and 475).

If the successor dies before the succession falls into possession:—

(5) If he was expectantly entitled for life only, so that his succession never takes effect, it does not become taxable. The succession of the next beneficiary is substituted.

(6) In the case of an absolute interest in personal property, the provisions as to *transmitted successions* apply (pp. 473–474). If the property bears Legacy Duty under any of the devolutions, it may thereby be exempted from Succession Duty (p. 514, No. 5).

(7) In the case of real property, the *new succession* derived from the deceased successor displaces the original succession (pp. 474–475).

Removal of an Obstacle.

A succession may be chargeable with duty on a death which serves merely to remove an obstacle to the enjoyment of property by the successor. If a testator directs that property be accumulated for a term of years and that the property and accumulations be then held on trust for *A* for life with remainder to *B*, and *A* dies during the period, *B* takes (after an interval) a succession on the death of *A*: this will be so even if *B's* interest

was contingent (*e.g.*, on his surviving the period) provided that it takes effect ultimately in possession (*A.-G.* v. *Gell* (1865), 3 H. & C. 615). Again, if the capital and accumulations are given on the termination of the period to the person who shall then answer to the description of the testator's heir general, and *C* is the heir at the testator's death, then if *C* dies during the period and *D* enters into the position of heir, *D* takes (after an interval) a succession on the death of *C* (*Ring* v. *Jarman* (1872), L. R. 14 Eq. 357). In the two cases cited the testators had died before the S. D. A. 1853, so that successions referred to their deaths would not have been dutiable. The duty in such circumstances could now be levied with reference either to the death of the testator or to that of the first intended beneficiary. The principle is still important where property is directed by instrument *inter vivos* to be accumulated; but its commonest application is to settled policies which are surrendered: *E* settles a policy on his life on trust for his wife for life, with remainder to his children; the wife dies and the children surrender the policy in *E's* lifetime; Succession Duty is thereupon payable with reference to the wife's death.

There is, of course, no question of levying Succession Duty more than once in cases of this kind.

Joint Property.

Any beneficial interest in property, which accrues by survivorship on a death, is a succession (S. D. A. 1853, s. 3). Where, therefore, an owner or purchaser (who may be termed the "donor") has caused property to be vested in the joint names of himself and another person to the intent that the donor should receive the whole income during his life and that on his death the other person should become entitled to the property, Succession Duty is payable on the death of the donor on the

whole property as on a succession from the donor. No duty is payable in such a case on the death of the other person in the donor's lifetime. Where property is vested in persons as joint tenants, in the strict sense, so that their beneficial interests are equal in all respects, and one of them dies, Succession Duty is payable on the share accruing to the surviving joint tenant. In the case of joint tenants a distinction is made between a title which confers a succession and one which does not. If it confers a succession the predecessor is the person who created the joint tenancy. If not, the predecessor is the deceased joint tenant. For instance: *A* by will gives a freehold house to *B* and *C* as joint tenants. On *A's* death *B* and *C* acquire the property jointly under a title conferring a succession derived from *A*, and therefore they will pay duty at a rate dependent on their relationship (if any) to *A*. If *B* then dies, *C* will succeed to his moiety and pay duty thereon as derived from *A*. If, however, in such a case *A* died after the passing of the F. A. 1894, and his free estate did not exceed £1,000, the exemption from Succession Duty conferred by s. 16 would apply not only on his own death but also on the death of *B*. If, on the other hand, *B* and *C* had bought the property and had it conveyed to them as joint tenants, or it had been given to them jointly by gift *inter vivos*, they would not in such cases have acquired it under a title conferring a succession, and therefore if *B* died first, *C* would pay duty as on a succession derived from him. In the example first given Succession Duty is payable on *A's* death by *B* and *C* on the capital value of the property; and in both examples Succession Duty is payable on *B's* death on the capital value of the moiety accruing to *C*.

If a joint tenancy is severed before death by agreement or by sale of the property so that it does not pass

to the survivor, Succession Duty is not payable under the joint tenancy, but the severed share of the deceased, if not disposed of by him in his lifetime, is, of course, liable to duty as part of his free estate.

Policies.

Where a policy of assurance is assigned by way of gift by the assured to a donee, or is effected for the benefit of a nominee, and the assured pays the premiums to the date of death, Succession Duty is payable on the death of the assured, and this is so whether he has bound himself to pay the premiums or not, if in fact he does pay them. But if the premiums are paid by the donee after the assignment, or if the policy were fully paid, no Succession Duty is chargeable (*Lord Advocate* v. *Fleming or Robertson*, [1897] A. C. 145).

Where, in contemplation of marriage, a policy on the life of *A* the prospective husband was taken out by him, the premiums on which were covenanted to be paid by *B*, an uncle of the prospective wife, and the policy was settled on the usual trusts of a marriage settlement, and the first and subsequent premiums were duly paid by *B*, it was held that, looking at the substance and not the form of the transaction, *B* was the real predecessor and Succession Duty was payable on the death of the assured according to the relationship of the successors to *B* (*A.-G.* v. *Public Trustee*, [1920] 3 K. B. 675). The case of *A.-G.* (*I.*) v. *Riall*, [1906] 2 I. R. 122, where the facts were somewhat similar, was distinguished on the grounds that, in the latter case, the policy was taken out and paid for by the prospective husband, and until the prospective marriage was his independent property, whereas in the case of *A.-G.* v. *Public Trustee* (*supra*) the policy was *ab initio* subject to a trust to go into the settlement, and was taken out by *A* on the footing that

B should pay the first and subsequent premiums during the joint lives of the spouses.

Money Payable on Death.

Money payable under any engagement is expressly included in the definition of "personal property" (S. D. A. 1853, s. 1). So where *A* covenants in a marriage settlement to pay a sum of money on his death, Succession Duty is payable on *A's* death (*Lord Advocate* v. *Roberts' Trustees* (1857), 20 Dun. 449; *A.-G.* v. *Montefiore* (1888), 21 Q. B. D. 461).

If, however, in a settlement *A* covenants to pay a sum on his death and in the meantime interest at a normal rate on the covenant debt, or an annuity equivalent to interest, then if the beneficiary, having been in receipt of the interest or annuity, becomes entitled instead to the income for life of the capital sum, Succession Duty is not claimed on the covenantor's death, as the payment of the capital sum is in effect a mere change of investment. For the purposes of the Succession Duty at 1 per cent., therefore, the "first succession" in such a case will arise on the death of the first life tenant under the settlement. If the beneficiary is entitled absolutely to the capital sum, Succession Duty is chargeable, for, even if he was already receiving the interest or annuity, he obtains on the death something new. But if such beneficiary was entitled to the interest or annuity until the capital should become payable, or at any rate for his own life, then the case is treated as one of *enlargement of interest* (pp. 485–486, *infra*), and an allowance in respect of his existing interest is made.

General Powers of Appointment.

Where under a disposition any person has a general power of appointment, taking effect upon the death of a

person dying after the S. D. A. 1853, he is deemed, in the event of his making any appointment thereunder, to be entitled, at the time of exercising the power, to the property or interest thereby appointed as a succession derived from the donor of the power (S. D. A. 1853, s. 4). Where the donee of a power becomes chargeable in respect of property appointed by him, he may deduct any duty already paid in respect of any limited interest taken by him in such property (s. 33).

The words "taking effect upon the death" refer to the power itself, not to the disposition by which it is conferred or to the appointment by which it is exercised; and "taking effect" means "becoming operative" or "becoming certainly operative" (*re Lovelace* (1859), 4 De G. & J. 340). In the case cited, property was settled by deed on certain trusts during the joint lives of a husband and wife, and the life of the survivor, and in default of issue on such trusts as the wife should by deed or will appoint. The husband died in the wife's lifetime, and there was no issue. The wife's power *took effect* on the death of the husband. But if property is settled by deed on *A* for life and then as he may appoint, the power takes effect on the execution of the deed and s. 4 does not apply. It is considered further that the section applies only where the power takes effect on the death of some person other than the donee of the power.

The duty imposed by s. 4 is imposed on the appointor as donee of the power. It is not imposed on the appointees in respect of the benefit which they take under the appointment: they, as will appear later, may be chargeable with a separate and additional levy of duty. The donee of the power, if and when he chooses to exercise his power, is deemed to have made the property his own to do as he likes with, and to have taken an interest equal to the interest which he appoints (*A.-G.* v. *Upton*

(1866), L. R. 1 Ex. 224). In other words, he has assumed dominion over the property, and he is taxable accordingly. This is so, none the less, where he chooses to appoint the property away from himself.

If personal property goes to a successor for life, with remainder as he may appoint, he is chargeable in the first instance on his life interest only, even if the further remainders, in default of appointment by him, are to persons chargeable at the same rate or even to the executors, administrators and assigns of the successor. As regards real property, a successor having a general power of appointment is chargeable on the principal value in the first place as being competent to dispose (F. A. 1894, s. 18). In such a case no further Succession Duty is payable by him in the event of his exercising the power. It may happen, however, that the power takes effect (*e.g.*, on failure of the issue of a marriage) only after the donee has succeeded to, and paid duty on, a limited interest, or again, that the power is not coupled with any other interest in the property: in these cases, duty may still be leviable in respect of real property under s. 4 of the 1853 Act. If the interests of other persons are over-ridden by the appointment in the latter case, any duty previously paid by them is adjusted under s. 35 or s. 36.

Section 4 applies only to a sole power, not to a joint power (*Charlton* v. *A.-G.* (1879), 4 A. C. 427).

Where a general power is conferred and not exercised, it is of significance for Succession Duty only in the two respects which have been indicated: it makes the donee competent to dispose, so that duty is payable on the principal value of real property, and it prevents duty from being levied once for all on the capital in the case of personalty where the persons entitled in default of appointment are chargeable at the same rate as the donee of the power.

General Powers: Succession of Appointees.

If an appointment is made by will, or by deed subject to a life interest (whether of the appointor or of some other person), a succession, distinct from any succession of the appointor, is conferred on the appointee. The liability in this case depends, not on s. 4, but on s. 2 of the S. D. A. 1853; but the former section may govern the question, from whom as predecessor the succession of the appointee is derived—from the donor of the power or from the appointor. Apart from s. 4, the appointment must be read back into the instrument creating the power, and the predecessor *primâ facie* is the donor of the power. But where the appointor has acquired his power in the manner described in s. 4, he is deemed on making the appointment to be *entitled to the property* for an interest equal to the interest which he appoints, and thereby becomes "a new terminus of succession" (*A.-G.* v. *Upton*, *supra*). It is not material for this purpose whether Succession Duty has actually been paid or become payable by the appointor. The following examples may be given:—

(1) A testator dying in 1850 devised real estate on trust for his wife for life and then as she should by deed or will appoint. The wife died in 1859 having made an appointment by her will in favour of a person who was a stranger in blood to her but the descendant of a sister of the testator. The succession of the appointee was derived from the testator as predecessor, not from the wife (*re Barker* (1861), 7 H. & N. 109).

(2) A testator dying in 1835 bequeathed personal property to his daughter for life and then (in the events) as she should by deed appoint. The daughter died in 1867, having made an appointment by deed in favour of her nieces, the grandchildren of the testator. The succession of the

appointees was again derived from the testator, not from the daughter (*A.-G.* v. *Mitchell* (1881), 6 Q. B. D. 548).

In these cases s. 4 failed to apply because the powers took effect on deaths before the Act.

(3) *A* settled property by deed on *B* for life and then as *B* should appoint. *B* has appointed either by deed subject to his own life interest, or by will, in favour of *C*. *C's* succession is derived from *A* as predecessor, not from *B*. Section 4 does not apply, because the power did not take effect on a death.

(4) Estates were limited to a father, *D*, for life with remainder to his son, *E*, in tail. *D* and *E* disentailed and re-settled the property to such uses as they should jointly appoint, and in default of appointment (*inter alia*) on *D* for life, then on *E* for life, then on his sons in tail male, whom failing to such uses as *D* and his second son, *F*, should jointly appoint, with remainders over. *D* and *E* did not exercise their joint power, and *E* died in 1862 a bachelor. *D* and *F* afterwards, in exercise of their joint power, created a jointure rent-charge in favour of *D's* wife *G*, to arise on *D's* death. The succession of *G* was derived from *E* as predecessor, he being the donor of the power (*Charlton* v. *A.-G.* (1879), 4 A. C. 427). Section 4 did not apply, by reason that the power was a joint power. As to the general principle that the remainderman alone, not the life tenant, is the predecessor for any disposition of the inheritance, *see* pp. 411–412.

(5) A testator dying in 1856 devised real property to his wife for life and then as she should by deed or will appoint. The wife appointed the

property by deed, subject to her own life interest, to uses to secure an annuity to a person who was a stranger in blood to her, but the wife of a nephew of the testator. The case being within s. 4, the wife, and not the testator, was the predecessor and the annuitant was chargeable with duty at 10 per cent. (*A.-G.* v. *Upton, supra*).

In short, if s. 4 applies, the appointor is the predecessor of the appointee, and if s. 4 does not apply, the donor of the power is the predecessor of the appointee. In either case the *charging* section for the appointee's succession is s. 2.

General Powers: Conflict of Claims.

The subject of appointments under general powers is often complicated by the *conflict* of claims for duty. The chief rules which come into play are those dealing with transmitted and displaced successions (pp. 472–483, *infra*), and the rule that property liable to Legacy Duty is not also chargeable with Succession Duty in respect of the same acquisition (S. D. A. 1853, s. 18; p. 514, *infra*).—If *primâ facie* claims for both duties arise at the same time under different titles, the claim for Legacy Duty prevails. For example: *A* settled personal property (not leaseholds) by deed on *B* for life with remainder as *B* should appoint. *B* has appointed by his will in favour of *C*. *Primâ facie C* is chargeable with Legacy Duty under *B's* will according to his relationship to *B*, and also with Succession Duty on a succession derived from *A* as predecessor. Here the Legacy Duty must be levied, and the claim for Succession Duty thereupon disappears. Neither the Revenue nor the taxpayer has any option which duty shall be paid. But if the property is for any reason exempt from Legacy Duty,

as, for instance, where the appointor dies domiciled abroad, then the Succession Duty is leviable (*re Lovelace, supra*). It is similarly leviable where the case falls within s. 4 of the S. D. A. 1853, so that the appointor is the predecessor of the appointee (*re Wallop's Trust* (1864), 1 De G. J. & Sm. 656). His foreign domicile makes no difference for this purpose.

Where personal property (not leaseholds) is bequeathed by will with a general power of appointment, the payment of Legacy Duty on the capital does *not* prevent Succession Duty from being payable by appointees, to whom the property has been appointed by deed subject to the life interest of the appointor (*A.-G.* v. *Mitchell, supra*). Although such Legacy Duty is not usually payable until the appointor's death (his life interest only having been charged in the first place), it is levied, in terms of the L. D. A. 1796, s. 18, *with reference to the original acquisition* by the appointor, which is a separate acquisition from the acquisition of the appointees. On the other hand, if the power were conferred by deed and exercised by will, any Succession Duty payable by the appointor under the S. D. A. 1853, s. 4 (in respect of the notional acquisition by him when he makes the appointment), would be leviable *with reference to his death and not with reference to his original acquisition*: this follows from the different wording of the L. D. A. and the S. D. A. The claim for further Succession Duty would therefore be defeated if Legacy Duty were payable under the appointor's will.

Finally, a power of appointment may be exercised in reversion (in practice always by will), while the property is still subject to an outstanding life interest having priority over the interest of the appointor. Here the claims under the original title and under the appointor's will both arise on the death of the person having the prior interest. If Legacy Duty is payable under either

title, the claim for Succession Duty under the other title is defeated (*re Chapman's Trusts* (1865), 2 H. & M. 447). And if the property is realty (including leaseholds), the "new succession" under the appointor's will displaces his succession under the original title.

Limited Powers of Appointment.

A limited power of appointment (*i.e.*, a power to appoint to specified persons or to members of a certain class) does not cause the donee of the power to be chargeable with duty. If he takes for life, with a limited power, he is chargeable on his life interest only. On his death further duty is payable by the appointees, or the persons taking in default of appointment, as the case may be, and in either event the successions are derived from the person creating the power as predecessor, not from the appointor (S. D. A. 1853, s. 4).

A power may be a general power, and not a limited power, notwithstanding that designated persons are excluded from the benefit of any appointment (*Drake* v. *A.-G.* (1843), 10 Cl. & F. 257).

Cesser of Outstanding Interests (including Leases).

Where property is subject to any charge, estate or interest determinable on death (such as a jointure, rent-charge, or annuity), the increase of benefit accruing on the extinction or determination of the charge is deemed a succession derived from the person from whom the successor derived his title (S. D. A. 1853, s. 5). For example: *A* by deed gives property to *B*, subject to an annuity of £50 to *C*. On the death of *C* in *B's* lifetime, Succession Duty would be payable on the cesser of his annuity as derived from *A*. This provision does not apply to an annuity or terminable charge created by the owner of property where such annuity or charge ceases on a death during his lifetime. The successor

in such a case is his own predecessor, and therefore Succession Duty is not payable (S. D. A. 1853, s. 12). Nor does it apply where the transaction is as regards the outstanding interest based on full consideration in money or money's worth.

The above provision deals with duty in respect of an outstanding charge where the *property* itself may not be liable to duty. Supplementing this, provision is also made for a *succession* which is subject to such a charge. Where a *succession* is subject to any prior charge, estate, or interest not created by the successor himself, by reason whereof he does not at once become entitled to the full enjoyment of his succession, it is provided that duty is to be paid on the increased value accruing on the determination of such charge, estate or interest at the time of such determination; but no duty is to be paid on the determination of any lease at a rack rent (S. D. A. 1853, s. 20). This generally applies where the successor takes for life, and some annuity, jointure, or other charge, not created by him, is in existence when he succeeds. In such case, he deducts in his account the annual equivalent of the annuity, jointure, or charge, and on the cesser thereof renders a supplemental account. The duty on the supplemental account is subject to the same provisions as to discount and payment by instalments as the duty payable on the original account. Thus on the death of *A*, *B* succeeds for life to real property, subject to a jointure created by a predecessor in title in favour of *C*; *B* renders his account on the death of *A* and deducts the jointure against the annual value of the property. On the death of *C* he renders a supplemental account for duty on the further benefit accruing to him by the cesser of her jointure. Similarly, where a successor succeeds to a freehold ground rent for life, he pays duty on the value for his life of the ground rent, and when the lease falls in he

renders a supplemental account for the difference between the then annual value of the property and the ground rent, his age being taken at the date when the lease terminated (*A.-G.* v. *Bedford*, [1926] 2 K. B. 184). If, however, the property is sold and the original successor dies before the annuity or lease has fallen in, no Succession Duty is payable on the death of the annuitant or the falling in of the lease, there being no life on which to base the assessment. If the original successor is living, the asessment is based on his life, notwithstanding that the property is vested in a purchaser, and the purchaser is *primâ facie* accountable (*A.-G.* v. *Mander* (1896), 65 L. J. Q. B. 246). As to the position between vendor and purchaser, *see* p. 503, *infra*.

The rate of Succession Duty in cases of this kind is the same as that paid on the original succession of which the accruing benefit forms part, and (as the law stands) is not subject to any statutory increase in the rates of duty made between the date of the original succession and the date when the increased benefit falls into possession.

Where the charge was created by the successor himself before he became entitled in possession to his succession, he cannot make any deduction in his account unless the charge were created in such a way as to create a new succession (*see* S. D. A. 1853, s. 20, and *re Peyton* (1861) 7 H. & N. 265). But an incumbrance created by a Scottish heir of entail as part of an arrangement with the then apparent heir was regarded as created by the heir in possession and so was allowed (*Lord Advocate* v. *Glasgow* (1875), 2 Rett. 317).

Where real property is subject to a lease and the successor for life has not therefore paid duty on the full yearly value, he is chargeable with duty upon his interest in any fine or other consideration which may be received

for the renewal of such lease or the grant of any reversionary lease (S. D. A. 1853, s. 25). For instance, before the lease falls in, a successor may agree to renew it or to grant a reversionary lease at the same rent, but subject to payment of a lump sum. In such case, further Succession Duty is payable on his interest in such sum.

Where the successor takes an absolute interest in real estate, it should be borne in mind that duty is payable on the capital value of the property (F. A. 1894, s. 18), and in the case of ground rents the then value of the increased benefit to accrue on the determination of the lease is in all cases included in the valuation of the property. The duty paid, therefore, covers both the value of the ground rent and the reversion expectant on the determination of the lease, and a further account is not necessary on the lease falling in. Similarly, in the case of property which a successor takes absolutely subject to an annuity or rent-charge, if the value only of the annuity or rent-charge was deducted against the capital value of the property and duty paid on the balance, no further Succession Duty would be payable on the cesser of the annuity or rent-charge. But if deduction had been taken in the original account for a capital sum or "slice" sufficient to produce the annuity or rent-charge, then further Succession Duty would be payable when such charge or annuity terminated, in respect of the deduction so made.

The correct method of dealing with deductions in respect of annuities is noted at pp. 153–155 in connection with Estate Duty: the same principles apply to Succession Duty where the successor is competent to dispose.

Gifts with Reservation.

If a disposition (not being a *bonâ fide* sale and not conferring on the person in whose favour it is made an interest expectant on death) is accompanied by any

reservation for the benefit of the grantor or any other person, for any term of life or any period ascertainable only by reference to death, the cesser of the benefit so reserved is chargeable with duty as a succession (S. D. A. 1853, s. 7). For example: *A* gives £500 to a charity subject to the payment of an annuity of £25 to himself for life and on his death to his wife for life. It is evident that the annuity is approximately the average income of the fund, and nothing really comes out of the donee's pocket. Succession Duty is therefore payable on the death of *A's* wife on the capital value of the annuity of £25 which then ceases to be payable, in addition to the Estate Duty which, on *A's* death, was chargeable on the full £500 (*A.-G.* v. *Johnson,* [1903] 1 K. B. 617). Under the F. A. 1910 the succession taken by the wife might also be liable to duty.

The reservation need not be formal or appear on the face of the title. Where a disposition purports to operate immediately, or in such circumstances as not to confer a succession, but by reason of any enforceable secret trust or arrangement the beneficial interest does not pass in accordance with the disposition, but in fact devolves to any person on death, or at a period ascertainable only by reference to death, such person is deemed to take the property as a succession, derived from the person making the disposition as predecessor (S. D. A. 1853, s. 8).

The reservation must, in any event, be enforceable, and therefore if a person effectually gives away property in his lifetime with an expectation, but not an enforceable agreement, that he will be permitted to enjoy the income for life, Succession Duty is payable. This applies to all gifts made by a person during his life, even though within three years of his death, in which case, as has been explained, Estate Duty is payable.

Where there is an enforceable reservation and the gift is of personal estate, duty is payable on the increased benefit as a perpetual annuity, which is calculated at twenty-four and two-fifths years' purchase (*Lord Advocate* v. *McKersies* (1881), 19 S. L. R. 438). Thus if *A* gives £1,250 to *B*, reserving to himself an annuity of £50 for life, Succession Duty is payable on *A's* death on the value of £50 as a perpetual annuity. According to the tables, this is valued for ninety-five years or about twenty-four and two-fifths years' purchase, and is worth £1,219 17s. 9d. Where an annuity was reserved out of the income of real estate, Succession Duty is regarded as payable on the value only of the annuity for the life of the successor. The succession is not considered to be a succession to real property within the meaning of s. 18 of the F. A. 1894, and the claim for Succession Duty does not therefore extend to the principal value of so much of the property as is required to produce the annuity.

If the donee died before the donor, no Succession Duty would be payable on the death of the donor. The property would, however, be liable to Estate Duty as part of the donee's estate, one allowance being made for the value of the continuing reservation in favour of the donor.

Foreign Element.

Succession Duty is imposed only on those who claim by virtue of British law (*Wallace* v. *A.-G.* (1865), L. R. 1 Ch. App. 1). The expression "British law" is used as meaning English or Scottish law.

The title to immoveable property is governed, in the view of British law, by the *lex situs*, that is, the law of the place where the property is situate. If a foreigner

succeeds under a foreign will to immoveable property (including leaseholds) in this country, Succession Duty is payable (*Wallace* v. *A.-G., supra*). If a person domiciled and resident here succeeds under a British will to immoveable property abroad, Succession Duty is not payable. The question of locality and the distinction between moveable and immoveable property are dealt with in Chapter I (pp. 101–110): it may be noted, by way of example, that where land abroad belongs to a British partnership or is held on trust for sale under a British settlement, the beneficial interest is a British *chose in action* (*A.-G.* v. *Johnson*, [1907] 2 K. B. 885).

In the case of moveable property, liability will ordinarily depend on the question whether the *forum* for the administration of the trust is in Great Britain or not. If the *forum* is British, Succession Duty is payable on moveable property wherever situate; if the *forum* is not British, the duty is not payable even on property situate here.

In determining the *forum*, the declared or implied intention of the testator or settlor is the first point to be considered. In the case of a will the *forum* is *primâ facie* in the country where the testator was domiciled at his death. In the case of a marriage settlement the *forum* is that expressly or by implication agreed upon by the parties; and in the absence of any such agreement the *forum* is determined by the matrimonial domicile, *i.e.*, the actual domicile of the husband at the time of the marriage (*Van Grutten* v. *Digby* (1862), 31 Beav. 561; *re Fitzgerald, Surman* v. *Fitzgerald*, [1904] 1 Ch. 573). The conveyancing form of the disposition (British or otherwise), the locality of the settled property, and the places of residence of the trustees and beneficiaries, may all be relevant, as is shown by the cases cited below.

The following are the principal cases on settlements *inter vivos*:—

(1) By a marriage settlement executed in England, a husband, domiciled in Australia, assigned to English trustees an English policy of assurance on his life and a sum of consols, and covenanted to pay a sum of money within three years. The trusts were for the wife for life, then for the husband for life, and then (in the events) for the only child of the marriage. At the death of the wife (the husband having predeceased) only the consols had come to the hands of the trustees. It was held that the *forum* was British and that Succession Duty was payable on the whole of the settlement funds (*Lyall* v. *Lyall* (1872), L. R. 15 Eq. 1).

(2) An English lady on her marriage with an Italian settled English and foreign securities by a settlement in the English language and form, upon trust for the husband during the joint lives of the spouses, then for the surviving spouse, and then for the children. Three of the four original trustees were English and the other Italian. On the death of the husband, who survived the wife, all the trustees were English, but the beneficiaries were foreigners. It was held that the *forum* was British and that Succession Duty was payable on the whole of the funds (*re Cigala's Settlement Trusts* (1878), 7 Ch. D. 351).

(3) By a bond of provision in Scottish form, a domiciled Canadian bound himself to pay a sum of money to four trustees, of whom three were Scottish and the other Canadian, upon trust (in the events) after the death of the settlor for his children. In due course the trustees received

the money and invested it in Scottish heritable security. Succession Duty was held to be payable on the settlor's death (*Lord Advocate* v. *Gibson* (1882), 10 Rett. 224).

(4) A domiciled Frenchman transferred bearer securities of foreign governments to an Englishman, who, by direction of the transferor, executed a declaration of trust in favour of the transferor for life, with remainders over. The trustee died and the funds passed into the hands of his executors, also English. It was held that Succession Duty was payable on the death of the transferor (*A.-G.* v. *Felce* (1894), 10 T. L. R. 337).

(5) A domiciled Austrian transferred bearer securities, held partly by a bank here and partly by banks abroad, to a company, incorporated and having its registered office in England but its real management abroad, upon trusts, contained in a deed in the English language and form but executed abroad, for the settlor for life and then for the benefit of Russian Jews. It was held, on the settlor's death, that the company must be regarded as a purely English company, and that the deceased "had resort to an English corporation . . . in order that his donation of £2,000,000 of money might, if need be, be administered by English judges according to English law. In truth and in fact the [deceased] deliberately and intentionally submitted his scheme to English law, and indelibly stamped it as being an English scheme." (*A.-G.* v. *Jewish Colonization Association*, [1901] 1 K.B. 123.)

An appointment under a general power conferred by a British disposition is within the scope of Succession

Duty, whatever may be the domicile and residence of the appointor. Where, therefore, a domiciled foreigner exercises such a power by his will, and by reason of his domicile no Legacy Duty is chargeable, Succession Duty is payable instead. This rule applies to cases falling within s. 4 of the S. D. A. 1853, where the appointor is the predecessor of the appointees (*re Wallop's Trust* (1864), 1 De G. J. & Sm. 656), as well as to cases outside s. 4, where the donor of the power is the predecessor of the appointees (*re Lovelace* (1859), 4 De G. & J. 340). It will be remembered that in the converse case, where a testator domiciled here exercises a general power conferred by a non-British disposition, Legacy Duty is payable under his will.

As regards gifts with reservation, the test is whether Great Britain is the *forum* for enforcing the reservation. Similarly, in the case of joint property, the question is whether the beneficial interest of the survivor depends on British law. English persons making a joint investment in foreign securities would normally be considered to have set up an informal English trust, even if the law of the foreign country also recognised the *jus accrescendi*. Investments locally situate here, devolving by survivorship between foreigners, are liable to Succession Duty only where their domestic law does not recognise the *jus accrescendi*. If their domestic law recognises that principle, the survivor is treated as taking the beneficial interest by virtue of his own law.

The liability of settled policies is governed by the *forum* of the settlement; but an ordinary nomination policy is itself the disposition, so that, if a person domiciled here effects and keeps up an American policy for the sole benefit of his wife, no Succession Duty is payable. Conversely, if a foreigner effects and keeps up a similar British policy, the wife will take under British

law and will be chargeable with Succession Duty. It should be noted that a foreign insurance company may issue British policies from a branch residence here, and conversely that a British company may issue foreign policies from a branch residence abroad (p. 104).

British Settlements created by Foreign Wills.

In the leading case of *A.-G.* v. *Campbell* (1872), L. R. 5 E. & I. App. 524, a testator domiciled in Portugal made his will in English form, appointing as executors three persons resident in England and one resident in Portugal. He directed them, after getting in his estate, most of which was in Portugal, to invest the residue in English securities and (*inter alia*) to set aside a sum of consols to provide an annuity for A. On *A's* death the consols were to fall into residue and go to the testator's children. A at her death was domiciled and resident in Ireland; the testator's children were domiciled and resident in Portugal. Succession Duty was held to be payable in respect of the children's succession to the consols.

There had been a similar decision in the earlier case of *re Badart's Trusts* (1870), L. R. 10 Eq. 288.

Succession Duty was similarly held to be payable on the death of the life tenant, under the will of a testatrix who died domiciled in France—the executors and beneficiaries being all British, and the property being situate in Great Britain both at the testatrix's death and at the life tenant's death (*Duncan's Trustees* v. *M'Cracken* (1888), 25 S. L. R. 551).

These decisions do not involve any liability to British duty on the testator's own death (except Estate Duty on the property situate here). It had already been settled that Succession Duty could not be claimed, in lieu of Legacy Duty, on the death of an owner domiciled abroad, in respect of his moveable property in this country

(*Wallace* v. *A.-G.*, *supra*, over-ruling *re Capdevielle* (1864), 2 H. & C. 985). It would seem that the domicile is the governing factor so long as the estate is in process of administration: if the directions in the will involve the submission of the trusts to a *forum* in another country, the change is effective only when the property has lost its character of assets of the deceased and has assumed the character of a trust fund (*A.-G.* v. *Campbell*, *supra*). Where a testator, dying domiciled in Australia, appointed local executors to collect his property there, and directed them to remit it to his English executors and trustees who were to hold it for the testator's wife for life, with remainder to his children, no Succession Duty was payable in connection with the death of the wife, before any part of the property was received in this country (*Lyall* v. *Lyall*, *supra*—a separate issue).

Change of Forum.

If the *forum* of administration for a settlement is originally British, or if the *forum* at any time becomes British, no subsequent change of *forum* can affect the liability to British Succession Duty. This follows from the principle, *once a succession, always a succession.* The question, whether such a change of *forum* could be effected, does not, therefore, arise.

The converse question, of a foreign disposition becoming subject to a British *forum,* is somewhat obscure. It is clear that a British trust may be created by a foreign will or other disposition which contains an appropriate direction; and an express power, if acted upon, would presumably have the same effect as a direction. It is clear also that the beneficiaries, if *sui juris,* can establish a British settlement on the old trusts by a new disposition (*re Smith's Trusts* (1864), 10 L. T. 598). In other cases, however, a non-British settlement

will not become British by reason merely of such a step as the appointment of British trustees.

In *A.-G.* v. *Belilios,* [1928] 1 K. B. 798, a testator who died in 1905, domiciled in Hong Kong, appointed his son and three other persons, all resident in Hong Kong, as executors. He gave his immoveable property (all in Hong Kong) and his personal property on trust for sale and for investment in *(inter alia)* Great Britain and Hong Kong. The trusts of the residuary estate were for the son for life, with remainder to the son's children. The will contained a direction that it should take effect, so far as the case admitted, according to the law of Hong Kong. The son alone proved the will and acted in the trusts, and the grant was resealed in England. In 1911 the son mortgaged his life interest to an English Bank, at whose instance further trustees, resident in England, were appointed. Subsequently a number of orders were made by the Chancery Division of the High Court in England, on the application of the trustees, by which various proposals for the execution of the trusts were approved, but no general order for administration was made in England. The son died in England, but was still domiciled and resident in Hong Kong. At his death all the other trustees were English. He left two children, both under age, who were in England for education and were wards of Court in England. The Crown claimed Estate Duty and Succession Duty on the whole of the trust property, consisting of a small sum in a bank in England and moveable and immoveable property abroad. *Held*, that the character of the original disposition had not been altered by the appointment of English trustees or the advisory assistance of the Chancery Division, that the *forum* remained in Hong Kong, and that the only British duty payable was Estate Duty on the assets locally situate here. The question, what the position

would have been if the British element had been stronger, was left open.

Double Taxation in British-Irish Cases.

To prevent dual liability to Succession Duty, or to Succession Duty and Legacy Duty, where there has been a change in the *forum* of administration of a settlement as between Great Britain and the Irish Free State, the Relief in respect of Double Taxation (Succession and Legacy Duty) (Irish Free State) Declaration, 1926 (S. R. & O. 1926, No. 975), has provided that where the Commissioners of Inland Revenue are satisfied that the *forum* of administration of any particular settlement is in the Irish Free State, and that under the settlement in question Succession Duty is payable in that State by reason of a death of a person dying on or after the 1st April, 1923, in respect of any settled personal or moveable property, they shall allow a sum equal to the amount of that duty to be deducted from the British Legacy or Succession Duty payable in respect of the same property on the same death. The Declaration is made under the powers conferred by s. 5 of the Irish Free State (Consequential Provisions) Act, 1922. Reciprocal provisions for converse cases are contained in the (Irish) Double Taxation (Relief) Order, 1926, (Irish) S. R. & O. 1926, No. 42, made under powers conferred by the (Irish) Double Taxation (Relief) Act, 1923.

Similar reciprocal provisions as between Great Britain and Northern Ireland, in the case of deaths on or after the 22nd November, 1921, are contained in the F. A. 1927, s. 52, and Finance Act (Northern Ireland), 1927, s. 6 (1).

Therefore if a British testator creates by his will an Irish settlement, the Irish Succession Duty payable on the death of a life tenant is allowed against the British Legacy Duty chargeable on that occasion.

CHAPTER XII.

THE RATES AND AMOUNT OF SUCCESSION DUTY.

The rates of Succession Duty now payable (under the S. D. A. 1853, s. 10, as amended by the Customs and Inland Revenue Act, 1888, s. 21 (1), and F. A. 1910, s. 58) are as follows:—

Relationship of Successor to Predecessor.	Rate per cent.			
	Ordinary Rates.		Higher Rates under 1888 Act, where no Estate Duty is paid.	
	Death on or after 30th April, 1909.	Death before 30th April, 1909.	Death on or after 30th April, 1909.	Death before 30th April, 1909.
Husband or wife	1	—	1 (ordinary rate only)	—
Lineal issue and lineal ancestors	1	1 (but after 1894 usually covered by exemptions)	1½	1½
Brothers and sisters and their descendants ...	5	3	6½	4½
Brothers and sisters of the father or mother and their descendants ...	10	5	11½	6½
Brothers and sisters of the grandfather or grandmother and their descendants	10	6	11½	7½
Persons of more remote consanguinity and strangers in blood	10	10	11½	11½

Where the free estate does not exceed £1,000, it is not liable to Succession Duty or Legacy Duty (F. A. 1894, s. 16 (3); p. 513).

Where the free estate slightly exceeds £1,000, the amount of the Succession Duty and Legacy Duty is limited to the amount of the excess (F.A. 1914, s. 13 (2); p. 382).

There are extensive exemptions from the 1 per cent. rates (pp. 518–529).

Relationship.

As regards (*a*) marriage to a relative of the predecessor, (*b*) adoption and (*c*) legitimacy, the observations regarding Legacy Duty (pp. 341–343) apply to Succession Duty also. This is subject to two qualifications. (1) In strictness a successor is *chargeable* with Succession Duty as soon as his succession is conferred, and is apparently not entitled, if he marries a relative of the predecessor, after a reversionary succession has been conferred but before it has fallen into possession, to the advantage of the lower rate. In practice, however, the lower rate is conceded in such cases. (2) In the case of immoveable property, legitimacy ought, it seems, to be determined according to the *lex situs* (whether England or Scotland) and not by the law of the successor's domicile (*cf. Birtwhistle* v. *Vardill* (1840), 7 Cl. & F. 895, H. L., and *Atkinson* v. *Anderson* (1882), 21 Ch. D. 100). The point has lost most of its importance in England and Wales since the Legitimacy Act, 1926.

Post-1909 *Rates*: "*First Succession.*"

The rates applicable to deaths on or after the 30th April, 1909, were imposed (apart from the possible addition under the 1888 Act) by the F. A. 1910, s. 58.

The death is not necessarily that on which the immediate claim for duty arises. The section applies—

In the case of a succession arising through devolution by law, where the succession arises on or after the 30th April, 1909, and

In the case of a succession arising under a disposition, where the *first succession* under the disposition arises on or after that date (F. A. 1910, s. 58 (4)).

If the first succession under the disposition arose before that date, the new rates are not payable under such disposition even on deaths after 1909.

A succession is deemed to *arise* for this purpose on the death by reason of which the successor or any person in his right or on his behalf first becomes entitled in possession to the property or the income thereof (F. A. 1925, s. 24—subsequent to the decision in *Lord Advocate* v. *Macalister,* [1924] A. C. 586, that a succession *arose* when it was *conferred*).

A "succession" means a succession within the scope of the S. D. A. 1853. A *de facto* succession outside the scope of the Act must be disregarded. For example, *A* in 1823 by disposition and deed of tailzie disponed land in strict entail to himself and the heirs of his body, whom failing to *B* and the heirs male of his body, whom failing to the heirs female of his body, whom failing to other heirs substitutes. *A* died in 1829 leaving no heirs of his body. *B* died in 1838 and was succeeded by his son *C*. *C* died in 1910 leaving no heirs male, and was succeeded by his daughter. She took as head of a new class of heirs, and therefore by disposition, not by devolution. The *de facto* successions of *B* and *C* having arisen before the S. D. A. 1853, the *first succession* under the deed for the purpose of the F. A. 1910 arose on the death of *C,* and the new rate was payable (*Hamilton* v. *Lord Advocate,* [1920] A. C. 50).

Similarly if a domiciled foreigner creates by his will a British settlement of moveable property, the *first succession* under the will arises, not on the death of the testator, but on the death of the first life tenant.

But a succession may be a *first succession* notwithstanding that it is exempt from duty. For example, *A* in 1900 settled property on himself for life, then on his wife for life, then on other persons. A died in 1905. The first succession under the settlement arose on his death, notwithstanding that no Succession Duty was then payable on the successions of spouses. The position would be the same if *A* had died in 1905, devising real property to his wife with remainder to other persons. Again, if *B* settled property by deed on *C* for life, then on himself for life, then on other persons, the first succession would arise on the death of *C*. *B*, taking under his own disposition, would be exempt from duty, but he would take a *succession*, none the less (S. D. A. 1853, s. 12).

The distinction between a *disposition* and *devolution* is indicated on pp. 410–411. Two further points require to be noted. First, where the husband or wife of an intestate has an estate in dower or by the curtesy, or any other like estate, the Finance Acts apply as if the property was settled by the will of the deceased (F. A. 1894, s. 22 (3); F. A. 1910, s. 96 (3)). A statutory life interest under the A. E. A. 1925 appears to be a "like estate" for this purpose. Estates of terce and courtesy in Scotland are in the same position (F. A. 1894, s. 23 (19)). To the extent of the life interest, therefore, the property must be treated as the subject of a disposition, and the first succession under that disposition clearly arises on the death of the intestate. If an intestate died in 1908, owning English realty and leaving a widow and a nephew as his heir-at-law, the nephew's succession to the dower "slice" on the death of the widow after

1909 is chargeable at 3 per cent.—not 5 per cent. as it would be if he were treated as taking by devolution on the widow's death. Secondly, if an intestate's estate includes real property in reversion, the succession to *that* property arises, not on the death of the intestate, but on the death when the property falls into possession.

The first succession to real property under a will, where the testator dies after 1853, arises on his death, except as to property in reversion. The first succession to the reversionary property arises—as in the case where the reversioner dies intestate—on the death which brings the property into possession.

Under an ordinary settlement *inter vivos,* the first succession arises on the death of the first life tenant. If different items of property are settled by the same instrument on different trusts, each item should be regarded as the subject of a separate disposition, and there may be separate first successions. So also, if different shares of the same property are settled on different trusts, there may be separate first successions to the various shares. But if a fund is held by the trustees of a settlement on trust to divide the income between two or more persons during their lives, with survivorship, the succession on the death of the first beneficiary to die is a first succession under the disposition of the whole fund. The difference between the income of a share and a share of income is not merely one of words (*Macculloch* v. *Anderson,* [1904] A. C. 55). Similarly where a settled fund or estate is charged with an annuity, a succession to the annuity or annuity "slice" may be a first succession for the purpose of the disposition of the whole fund or estate.

Where property in strict settlement is disentailed and re-settled by the original tenant for life (*A*) and original tenant in tail in remainder (*B*), all subsequent successions arise under the re-settlement, which is therefore

the disposition under which a first succession must be sought (*cf.* S. D. A. 1853, s. 12, and *Parr* v. *A.-G.*, [1926] A. C. 239). Normally this arises on the death of *A*, whose life interest is restored by the re-settlement; but if the re-settlement creates an immediate annuity (usually an annuity in favour of *B* for the joint lives of *A* and himself), the first succession may arise on the annuitant's death in *A's* lifetime. Although, if *A* is succeeded by *B* (or his alienee), the rate of duty will still depend primarily on *B's* relationship to the predecessor under the old settlement, the question, whether the old or new scale applies, is governed by the date of the first succession under the re-settlement, not by the date of the first succession under the original settlement. Other aspects of these cases are dealt with below (pp. 472–483).

If, without breaking the original settlement, a reversioner (*Y*) settles his expectant interest on himself for life, with remainders over, and survives the original life tenant (*X*), the first succession under the new settlement arises on the death of *Y*. *Y's* succession on the death of *X* must be considered to have arisen, in these circumstances, under the old settlement. If, however, *Y* died in the lifetime of *X*, the first succession under the new settlement would arise on *X's* death. The same principles would apply if *Y* had made the new settlement on *Z* for life. If *Z* had then survived *X*, his succession on *X's* death would similarly have arisen under the old settlement, *Z* taking as *Y's* alienee.

Where property in possession and property in reversion are settled by the same instrument, the practice is to treat such properties as the subject of separate dispositions, under which there may be separate first successions.

In the case of a joint tenancy, it is necessary to ascertain how the property was acquired. If the joint

tenants took it under a title conferring a succession (*e.g.*, if it was devised to them as joint tenants), the governing first succession is the first succession under that title (*e.g.*, on the death of the testator who devised the property). Otherwise (*e.g.*, if the joint tenants merely purchased the property jointly), the first succession arises on the death of the first joint tenant to die.

The case of appointments under general powers is somewhat similar. Where the donor of the power is the predecessor, the governing first succession is the first succession under the disposition creating the power. Where the appointor is the predecessor, the governing first succession is the first succession under the appointment.

Where an interest in expectancy was *bonâ fide* sold or mortgaged for full consideration in money or money's worth before the 30th April, 1909, no other duty is payable by the purchaser or mortgagee than would have been payable apart from the F. A. 1910, and in the case of a mortgage any higher duty payable by the mortgagor ranks as a charge subsequent to the mortgage (s. 64). For example, if *A* in 1900 settled a fund on his sister for life with remainder to his nephew absolutely, and the nephew sold his reversion in 1908, the purchaser, on the death of the sister after 1909, pays Succession Duty at 3 per cent., not 5 per cent., although the death gives rise to the first succession.

The Higher Rates of 1888.

The Customs and Inland Revenue Act, 1888, s. 21 (1), imposed upon successions taken on or after the 1st July, 1888, and also upon legacies payable out of real or heritable estate where the testator died on or after that date, the following additional duties:—

Where the successor is the lineal issue or lineal ancestor of the predecessor, $\frac{1}{2}$ per cent., and

In the other cases mentioned in the S. D. A. 1853, s. 10 (viz., collateral relatives and strangers in blood), 1½ per cent.

The additions attach to the rates payable by these persons under the F. A. 1910 as well as to the old rates.

The 1888 Act operates only by way of addition. If any exemption from the basic rate is applicable, the ½ per cent. in the case of issue and ancestors, or the 1½ per cent. in the case of collaterals or strangers, cannot be levied alone. This is so, even if the exemption does not expressly affect the 1888 Act.

The additional rates are not payable—

(1) By the husband or wife of the predecessor, even in post-1909 cases where the £15,000 limit is exceeded and the property in question has escaped Estate Duty.

(2) By charities, because the 10 per cent. rate payable by charities is fixed by s. 16, not s. 10, of the S. D. A. 1853, and the 1888 Act refers to s. 10 only (*Lord Advocate* v. *Marshall* (1893), 30 S. L. R. 599).

(3) In respect of leaseholds passing under a will or intestacy (s. 21 (1) of the 1888 Act). This exemption extends to English leases for lives and Scottish leases, although they did not bear Probate Duty or Inventory Duty.

(4) In respect of property chargeable with Account Duty (s. 21 (1), *supra*). This duty was payable before the F. A. 1894, in the case of personalty only, on donations *mortis causa,* gifts within three (after 1889, twelve) months of death, joint property, gifts with reservation and (after 1889) policies effected and kept up for a donee.

(5) In respect of property chargeable with Estate Duty (F. A. 1894, s. 1). In practice a payment of Estate Duty in connection with the death of

a deceased reversioner is treated as conferring exemption from the additional rates under the primary title, and a payment of Estate Duty under the primary title as conferring exemption from the additional rates under a subsidiary title. In the case of issue or ancestors, any such payment, or a similar payment of Probate Duty, would involve exemption from the basic rate.

Examples:—(*a*) *A* by deed settled property on himself for life with remainder to his nephew *B*, and released his life interest in 1926. On *A's* death in 1930 (more than three years after the release, so that no Estate Duty is payable), *B* is chargeable with Succession Duty at 6½ per cent.

(*b*) *C*, dying in 1890, devised real estate to his wife for life, then to his sister *D* for life, then to his nephew *E*. The wife died in 1893. *D* released her life interest in 1926. On *D's* death in 1930, *E* is chargeable with Succession Duty at 4½ per cent. (The first succession arose before the F. A. 1910.)

(*c*) *F*, dying in 1890, devised real estate to *G* for life, then to *H*. *H* settled his reversion on himself for life, with remainder to his nephew *J*. On *G's* death Estate Duty was paid under *F's* will. *H* released his life interest in 1926. On *H's* death in 1930, *J* is chargeable with Succession Duty at 5 per cent. (The Estate Duty under the old title saves the additional 1½ per cent.; but the rate is 5 per cent., not 3 per cent., even if G died before 1909, because *H's* death gives rise to the first succession under the new disposition.)

(*d*) *K* by deed settled personal property on *L* for life, with remainder to *K's* nephew *M*. *M* died in *L's* lifetime, bequeathing his reversion to his wife *N*. Estate Duty was paid on *M's* estate, but it was exempt from Legacy Duty. *L* released his life interest in 1926. On *L's* death in 1930, *N* is chargeable with Succession Duty

at 5 per cent. (The Estate Duty on *M's* death saves the additional 1½ per cent. If Legacy Duty—at 1 per cent. —had been payable under *M's* will, the claim for Succession Duty would have been defeated.)

Nephews instead of issue have been selected for the examples, because in the case of issue a payment of Estate Duty (or Probate Duty) may secure exemption from the basic 1 per cent.

For practical purposes the scope of the 1888 rates is confined to cases of release of life interests—including cases of advances to remaindermen under express powers.

Compromises.

If there is a conflict between claimants to a deceased person's real property and a compromise is arranged, the claim for Succession Duty does not follow the compromise, but is payable in accordance with the rights of the parties as determined by the title which is allowed to stand (*Lord Advocate* v. *Gordon* (1895), 22 Rett. 639; *Lord Advocate* v. *Christie's Trustees* (1905), 12 S. L. T. 696). As regards compromises relating to personal estate, *see* pp. 337–338 as to Legacy Duty. Similar remarks apply to Succession Duty (S. D. A. 1853, s. 32, incorporating L. D. A. 1796, s. 23).

Time for Payment.

Succession Duty is payable at the time when the successor or any persons in his right (such as purchasers or derivative owners) or on his behalf (such as his trustees or committees) become entitled in possession to the succession or to the income and profits thereof (S. D. A. 1853, s. 20). But if the property is subject to any prior charge, estate or interest, including a lease at less than a rack rent, the duty may (except where it is chargeable on the capital value of real property under the F. A. 1894, s. 18) be paid in the first instance on

the basis of the immediate benefit, leaving further duty to be paid in respect of the increased value on the determination of the charge, etc. (pp. 428–431, *supra*).

Where a successor has not obtained the whole of his succession at the time when the duty becomes payable, he is chargeable only with duty on the value of the property or benefit from time to time obtained (S. D. A. 1853, s. 37). Where the value of the succession cannot be determined otherwise than by following the actual application of the property (*e.g.*, in the case of maintenance), the Legacy Duty rules as to charging duty "from time to time" are incorporated by s. 32 (*see* pp. 364–365).

Timber (pp. 456–457), certified works of art (p. 515) and advowsons (p. 516) are taxable only when sold, settled chattels only when they are sold or taken by a successor who is competent to dispose (p. 514).

Basis of Calculation.

Succession Duty is calculated in two ways—(*a*) where the successor is entitled to an absolute interest or is competent to dispose as he thinks fit, and also where personal property is given successively to persons all chargeable at the same rate, on the capital value of the property, and (*b*) in other cases where the successor is entitled to less than an absolute interest, on the actual value of such interest calculated according to the tables in the S. D. A. 1853. These tables are based on the average expectancy of life, and interest is taken at 4 per cent. (For Table I, *see* p. 566.)

A distinction must be made between real and leasehold property and other property.

Absolute Interest: Real Property.

In the case of real and leasehold property, where the successor is competent to dispose, Succession Duty is payable on the capital value as for

Estate Duty, after deducting (except in the case of leaseholds under a will) Estate Duty and the expenses of raising and paying the same (F. A. 1894, s. 18). The duty may be paid by the same instalments as Estate Duty on real estate: viz., eight yearly or sixteen half-yearly instalments, the first being payable at the expiration of one year from the death, and if the duty is paid within that time discount is allowed even where the property is sold. After the expiration of the year, interest is payable on the duty for the time being unpaid.

If the property is sold, all duty for the time being unpaid becomes immediately payable (F. A. 1894, s. 6 (8)). In England and Wales the unpaid duty becomes payable not only on a sale but also on an exchange, legal mortgage or charge, which over-rides the charge for duty (L. P. A. 1925, s. 17 (3); L. R. A. 1925, s. 73 (6)). Generally speaking, the charge for duty is over-ridden by any such transaction except where, in the case of non-registered land, it is itself registered as a Land Charge (pp. 198–200 and 506–507).

Should the successor elect to pay by instalments and die before all the instalments are paid, the unpaid instalments remain a charge on the property (*see* F. A. 1894, s. 18 (1)), and are payable by the succeeding owner as well as any further duties payable in consequence of the successor's death.

The material question is whether the successor is competent to dispose when the succession *arises, i.e.*, when it falls into possession, not whether he was at any time competent to dispose. If, therefore, an expectant successor re-settles his reversionary interest in real property on himself for life, with remainder to other persons, he will be chargeable with Succession Duty, when the reversion falls in, on a life interest basis.

The general meaning of *competent to dispose* is dealt with in Chapter I (Heading B), but there is a special provision that for the purposes of the F.A. 1894, s. 18, an institute or heir of entail is not deemed competent to dispose of an entailed estate in Scotland unless he is entitled to disentail it without obtaining the consent of any subsequent heir of entail or having the consent of any subsequent heir valued and dispensed with (F. A. 1894, s. 23 (15); F. A. 1896, s. 23). Subject to this exception, a tenant in tail is competent to dispose, and, if he dies during the instalment period, the remaining instalments, in strictness, are nevertheless payable. In practice, however, any instalments, which would have ceased to be payable in the case of a life interest, are waived (even where the deceased had power to dispose of the property by his will under the L. P. A. 1925, s. 176), provided that the property has not in fact been disentailed (or disposed of by the will). If the deceased disentailed (or disposed of) the property, the outstanding duty under the old title is collected (*cf. Lilford* v. *A.-G.* (1867), L. R. 2 E. & I. App. 63).

Where there is a direction to sell real and leasehold property, Succession Duty is payable as on a succession to personal property (S. D. A. 1853, s. 29, and see *infra*), and the duty cannot be paid by instalments.

It should be noted that the Estate Duty on real estate is a charge on the property (F. A. 1894, s. 9 (1)), and is therefore deductible in the succession account, but in the case of leasehold property under a will Estate Duty is not a charge on the property, but is payable by the executors out of the residuary estate (*re Culverhouse, Cook* v. *Culverhouse*, [1896] 2 Ch. 251). It is not, therefore, deductible in the succession account.

Where, however, the Estate Duty is payable under a deed or some other non-testamentary disposition or under a will on the death of a life tenant, it may be

deducted against leaseholds as well as real estate, because the leaseholds do not in such cases constitute property passing to the executor of the deceased (*i.e.*, the deceased life tenant) as such.

Should there be a direction in the will that a gift of property on which the duties are a charge is to be free of duty, deduction may be taken against the residuary personal estate, but the direction in the will is regarded as a legacy and is taxable as such with Legacy Duty (pp. 354–355, *supra*).

Where an interest in expectancy was *bonâ fide* sold or mortgaged for full consideration in money or money's worth before the 2nd August, 1894, no other duty is payable by the purchaser or mortgagee than would have been payable apart from the F. A. 1894, and in the case of a mortgage, any higher duty payable by the mortgagor ranks as a charge subsequent to the mortgage (F. A. 1894, s. 21 (3)). If the purchaser is an individual, he will consequently be chargeable in respect of real property on a life interest basis, but the *age* for the purpose of assessment is that of the purchaser, not of the original successor (*Northumberland* v. *A.-G.*, [1905] A. C. 406). If the purchaser is a corporation or society, duty is payable on the principal value under the S. D. A. 1853, s. 27 (*Solicitor-General* v. *Law Reversionary Interest Society* (1873), L. R. 8 Ex. 233). The rate of duty is that applicable to the original successor, but as s. 21 (3) prevents Estate Duty from being payable (p. 240), the higher rates imposed by the Customs and Inland Revenue Act, 1888, are usually chargeable.

Agricultural Property.

Formerly, in the case of property which was purely agricultural the value for Succession Duty was limited to twenty-five times the gross assessment to property tax under Schedule A, after deducting from such assessment

necessary outgoings such as repairs, insurance, etc., and expenses of management not exceeding 5 per cent. (F. A. 1894, s. 18 (2)). This limitation was provided because agricultural property sometimes had a fictitious value owing to extraneous circumstances, such as being near sporting estates, and it was thought unfair to charge Succession Duty on the full value in such cases. Now, however, Succession Duty is in all cases, where the successor is competent to dispose, payable on the full market value (F. A. 1910, s. 60 (1)), except that where there are labourers' cottages (occupied by persons employed solely for agricultural purposes), which have a special value owing to their suitability as country cottages for townspeople or others, such special value has to be disregarded (F. A. 1911, s. 18).

Timber.

Succession Duty is not payable in respect of timber as such but only in respect of the proceeds of sales. Where the last death occurred before the 30th April, 1909, the duty is leviable yearly on the successor's interest in the net moneys from time to time received, after deducting necessary outgoings, with exemption in the case of any year's proceeds which do not exceed £10 (S. D. A. 1853, s. 23). Where the last death occurred on or since the 30th April, 1909, the duty is levied in the same manner as Estate Duty (F. A. 1910, s. 61 (5); F. A. 1912, s. 9; pp. 145–148, *supra*). Shortly, the position is as follows:—Where the taxable property includes land on which timber, trees or wood are growing, Succession Duty is to be paid on the net sums, after deducting Estate Duty and necessary outgoings, which may from time to time be received from the sale of the timber, etc., when felled, until the property again becomes liable to Succession Duty by a further death. Interest at 4 per cent. is payable on the duty from the date when the moneys are received. If, however, such

timber, trees or wood are sold unfelled either with or apart from the land, Succession Duty is payable at once on the principal value as at the date of death after deducting Estate Duty, but without any deduction for outgoings. The Succession Duty (if any) already paid in respect of periodical sales is, however, to be allowed for in calculating the duty payable on such sale; but if and as soon as the aggregate net amount of the periodical sales reaches the principal value of the timber at the date of death, no further Succession Duty is payable on timber in connection with that death. The principal value, both as the value for duty if the timber is sold unfelled and as the limit for duty if it is felled, is always ascertained as at the *last* death on which the property passed, even if the death was that of a reversioner, when the property passed only as the subject-matter of an interest in expectancy. In the latter event, however, the successor (for the purposes of liability to account, rate of duty, and the question whether it is to be levied by way of life interest or not) is still the life tenant in possession. As to life interests in the proceeds of timber, *see* pp. 461–462.

Although there is no statutory power to commute for a present payment the duty in respect of timber, payment would usually be accepted upon the value at the date of death in satisfaction of such duty, and in that case periodical accounts would not be required. Moneys realised from the sales of underwood are not liable to Succession Duty, nor is timber felled and used for estate purposes.

Absolute Interest or Succession at same rate: Personal Property.

In the case of personal property, other than leaseholds, where the successor takes an absolute interest, Succession Duty is payable on the same value as for Estate

Duty, subject to a deduction for Estate Duty. The liability necessarily arises under some title other than the will or intestacy of the deceased, so that there is no question of debts or time required for administration. The duty is payable in full as from the death and cannot be paid by instalments, and interest is charged on the duty from the death. Duty is payable in the same way in the case of real and leasehold property directed to be sold, even though a sale may not have taken place (S. D. A. 1853, s. 29).

As in the case of legacies given to persons in succession, all liable to the same rate of duty, Succession Duty is also payable on the *corpus* of personal estate where the successor does not take absolutely, but the property is settled upon persons liable to the same rate of duty (S. D. A. 1853, s. 32, incorporating L. D. A. 1796, s. 12). For example: *A* by deed settles £4,000 on himself for life, and then on his niece *B* for life, and on her death on her husband *C* for life, and on the death of the survivor on their children equally. On the death of *A*, as all the beneficiaries are liable to the same rate of duty, Succession Duty is payable at 5 per cent. on the *corpus* of the £4,000, after deducting Estate Duty. No further Succession Duty will then be payable on the deaths of *B* and *C*, though of course a further Estate Duty will become payable on the death of *B*.

Personal property subject to a trust for investment in land, to which the successor would be entitled absolutely, is chargeable as personal estate (S. D. A. 1853, s. 30).

Limited Interests generally.

In these cases the interest of the successor is capitalised according to his expectancy of life at the date when he becomes entitled in possession (S. D. A. 1853, s. 31). The net annual value which the successor may

be expected to receive from the property is ascertained, and the capital value thereof is calculated by reference to the tables given in the S. D. A. 1853, on the basis of his completed age at the time he becomes entitled in possession (*see* Table I, p. 566). If his interest is for the joint lives of himself and another, the value is calculated according to Table II in the above Act. If his interest is not for life but for a limited period, then the value is calculated for that period as for so many years certain according to Table III in the above Act.

Whatever the property originally consisted of, whether real estate, leaseholds, or any other form of property, if there is a direction to sell and the property has been sold and the proceeds invested before the first instalment of duty becomes due, the actual income of the investments should be accounted for. But if no sale has taken place, or if there has been a sale but the proceeds have not been invested, the income which the capital would produce if invested in trustee securities should as a general rule be accounted for—say at $4\frac{3}{4}$ per cent.

Limited Interest: Real Property.

In the case of real estate and leaseholds, the gross annual value should first be ascertained (S. D. A. 1853, s. 21), and this is defined as the annual rent which a tenant might reasonably be expected, taking one year with another, to pay, if the tenant undertook to pay all usual tenant's rates and taxes and the landlord undertook to bear the cost of repairs and other expenses (if any) necessary to maintain the property in a state to command that rent. From this gross value, necessary outgoings, excluding tenant's payments, but including repairs, and other payments by the landlord, are deducted (*ibid.*, s. 22). In practice, the net annual value is generally determined from the actual rent at which the property is let, or if it is not let, the *gross*

assessment to property tax or, if not assessed, the *gross* assessment to poor rate, after deduction of all annual outgoings paid by the owner as above. Where, however, repairs are paid for by the tenant, as in the case of a repairing lease, they may not be deducted, nor may rates as a general rule, except where, in the case of small property, they are paid by the owner. Where the account is based on the gross assessment to property tax, tithe rent-charge is not a good deduction if, as is usually the case, it is separately assessed, and therefore allowed for in the gross assessment. In no case should Income Tax or property tax be deducted in a succession account (*re Elwes* (1858), 3 H. & N. 719), nor should expenses of management (*re Cowley* (1866), L. R. 1 Ex. 288), nor, in strictness, should fire insurance (*A.-G. (I.)* v. *Lorton* (1861), 11 Ir. C. L. 429). In practice, insurance is allowed.

Where there is a direction to sell, and no direction to re-invest in real property, the duty is payable in the same way as in respect of personal estate (S. D. A. 1853, s. 29).

A percentage at the current rate for trust securities (at present $4\frac{3}{4}$ per cent.) on the Estate Duty (except in the case of leaseholds under a will, as to which *see* p. 454) may be deducted. Deduction may also be taken for annuities, rent-charges or jointures, and $4\frac{3}{4}$ per cent. on legacies, portions or other capital sums, charged on the property (otherwise than by the successor), and, if a testator's personal estate is deficient, $4\frac{3}{4}$ per cent. on the amount of the deficiency may be deducted in the succession account of his residuary real estate.

In the case of copyholds, a further deduction could be taken in respect of any fines, fees, or other payments incident to the tenure and payable on the death to the lord of the manor (S. D. A. 1853, s. 28). The proper deduction is the annual sum which for the life of the

successor or for such shorter period as the successor's interest may continue, would equal in value the amount of such payments. Thus, suppose the successor's age were forty-eight, and the payments for fines amounted to £25: the equivalent annual value, according to the tables, would be £1 18s. 6d., and that sum could be deducted in the account. Although copyhold property has been enfranchised by the Law of Property Act, 1922, s. 128, deduction may still be taken on the same basis where the manorial payments are still being made or where an annual sum for a period of years has been agreed upon for their redemption. Where a capital sum for redemption has been agreed upon and is secured upon the property, $4\frac{3}{4}$ per cent. thereon should be deducted.

In the case of leasehold property, where the term is short, it is manifest that it would be unfair to the successor to base the account on the annual value, and in such cases the principal value should be shown, and the duty is then assessed on the value according to Table II of an annuity for the joint lives of the successor and an imaginary life at which the annual value is equivalent to the principal value of the property.

It follows, from the fact that duty is calculated on the annual value, that where at the time the successor becomes entitled in possession the property is not capable of producing any income and has no saleable value, no duty is payable (*A.-G.* v. *Sefton* (1865), 11 H. L. C. 257). If, however, the property has a saleable value, it is considered that duty is payable on the basis of an income at the current rate of interest on such value (*ibid.*).

Where the succession includes timber, trees or wood, the Succession Duty in respect thereof is payable on the capital sums from time to time received by the successor on sale, after deducting all necessary outgoings in the same manner as in the case of a successor who is

competent to dispose (p. 456, *supra*). It would seem that in strictness duty is payable in the same way where a part of the receipts from timber sales is retained by the trustees of the settled property and invested as capital moneys, as there is no provision in the Finance Acts corresponding to that in s. 23 of the S. D. A. 1853, by which duty was charged on the *interest* of the successor. In practice, however, duty is taken by way of life interest on the basis of an annual value of $4\frac{3}{4}$ per cent. (or the average rate of interest for the time being of trust securities) on the capitalised portion of the proceeds of sale.

As regards manors, opened mines, or other real property where the income fluctuates, it is provided that duty may be paid either on the basis of the average actual income after deducting necessary outgoings, during such a number of years preceding the time when the first payment of duty is due as may be agreed upon between the successor and the Commissioners, or if no such period can be agreed upon, the principal value of the property is to be ascertained and the annual value is to be taken at 3 per cent. interest thereon (S. D. A. 1853, s. 26).

Where allowance falls to be made for incumbrances or for improvements by the successor before he obtained possession, deduction can be made only of the yearly interest as reducing the annual value *pro tanto* (S. D. A. 1853, s. 34; p. 468, *infra*. In the case of a mortgage, the interest actually payable is deductible; and in the case of moneys spent in improvements, $4\frac{3}{4}$ per cent. on the sum expended.

The duty is payable as follows:—

(*a*) By eight equal half-yearly instalments, the first payable at the end of a year after the successor becomes entitled, and the others at half-yearly intervals from the day on which the first instalment became due (S. D. A. 1853, s. 21); or

(*b*) By two moieties, whereof the first is to be paid by four equal yearly instalments, commencing one year after the successor became beneficially entitled, and the second moiety is to be paid on the day for payment of the last instalment of the first moiety, or, if not so paid, is to be payable by four yearly instalments, with interest, from the last-mentioned date (Customs & Inland Revenue Act, 1888, s. 22 (1)); or

(*c*) In full, under discount (S. D. A. 1853, s. 40, and Customs & Inland Revenue Act, 1888, s. 22 (2)).

If the successor dies within four and a half years, the half-yearly instalments not due cease to be payable (*ibid.*, s. 22 (3) (*b*)).

It will be observed that by method (*a*) the duty should be completely paid at the end of four and a half years, and that by method (*b*) it should be paid by the end of four years. If in the latter case payment is not complete, the successor may continue to pay by instalments, but he must then pay interest on the duty for the time being unpaid.

He may also, if he chooses, pay in full under discount. In such case discount is allowed for three years three months, less the time which has elapsed since the death giving rise to the claim. If he dies before all the instalments, if paid half-yearly, would have become payable, application may be made for a re-calculation and a return of the instalments which have ceased to be payable (*ibid.*).

If land in England or Wales, in respect of which the Succession Duty is being paid by instalments, is sold, exchanged or mortgaged, and the charge for such duty is over-reached, all instalments immediately become payable (L. P. A. 1925, s. 17 (3), and L. R. A. 1925, s. 73 (6)). Generally speaking, the charge for duty is overridden by any such transaction except where, in the case

of non-registered land, it is itself registered as a Land Charge (p. 499). It is provided that if in the result the amount paid or payable for duties and interest exceeds the amount which would have been payable if the duties had continued to be paid by instalments, the Commissioners are to repay or allow the excess. This refers to the possible death of the successor within four and a half years, in which event the duty is to be re-calculated and adjusted.

Limited Interest: Personal Property.

In the case of personal estate, the full income produced by the property without deduction for Income Tax should be accounted for.

Deduction may be taken in respect of Estate Duty. Unless a part of the settled fund has been applied in payment of that duty, the allowance may usually be taken by deducting against the income a percentage at the rate of the Estate Duty. The duty is payable by four equal yearly instalments, and if the successor dies before all are payable the instalments which had not become due are not payable (S. D. A. 1853, s. 32, incorporating L. D. A. 1796, s. 8). If duty is paid in full, discount for two and a half years, less the time which has elapsed since the death, is allowed. Payment in full does not prejudice the right to claim a return of duty should the successor die before the period for payment by instalments has expired.

Personal property subject to a trust for investment in real property, to which the successor would not be absolutely entitled, is chargeable as real estate, the assessment being based on the income of the actual trust property at the time when the successor becomes entitled, whether it consists of real property purchased under the trust or of any intermediate investments (S. D. A. 1853, s. 30).

As already explained (p. 458), where a successor takes for life and those entitled on his death are liable to the same rate of duty, the Succession Duty is assessed at once on the *corpus* of the fund and not by way of annuity.

The corresponding Legacy Duty provisions are also incorporated by the S. D. A. 1853, s. 32, in the following cases :—

Annuity directed to be purchased (L. D. A. 1796, s. 10; p. 358, *supra*),

Benefits "from time to time" (L. D. A. 1796, s. 11; p. 364, *supra*), and

Chattels enjoyed in kind (L. D. A. 1796, s. 14; p. 382, *supra*, No. 6).

Contingencies.

No allowance is made for any contingency upon the happening of which the property may pass to some other person, but if the event does happen, the successor is entitled to a return of so much Succession Duty as would reduce it to the amount he would have paid if the duty had been assessed in respect of the actual duration of his interest (S. D. A. 1853, s. 36). Thus, if *B* succeeds to property for her life or until she re-marries, Succession Duty is assessed on the value of the net income from the property for her life without regard to the contingency of re-marriage. If, however, she does re-marry, a re-calculation has to be made. For instance, suppose the net annual value is £50 and *B's* age at the date she succeeds is forty. Succession Duty is payable on £743 15s., that being the value of an annuity of £50 for a life aged forty. At forty-five *B* re-marries, so that her interest determines after five years. The value of such interest for five years certain is only £222 11s. 9d. and therefore she becomes entitled to a return of

Succession Duty on the difference between £743 15s. and £222 11s. 9d.

Again, if property worth £100 per annum is devised to *A*, aged fifty, for life or until *B* shall attain twenty-one, and in that event to *A* and *B* equally during their lives, duty is taken in the first instance on the

	£ s. d.	£ s. d.
Value of the £100 per annum for the life of *A* without regard to the contingency of *B* attaining twenty-one ...		1,242 19 6
If, however, *B* attained twenty-one, say, after ten years, the actual *quantum* of *A's* interest would have been £50 per annum for his whole life	621 9 9	
And £50 per annum for ten years certain, per Table III	405 10 9	
Total on which Succession Duty is payable	———	1,027 0 6
And Succession Duty would be returnable on the difference		£215 19 0

Succession Duty would also be payable on the succession, to which *B* became entitled on attaining the age of twenty-one.

The same principles would apply where the original successor was competent to dispose, subject to the contingency, and duty was paid in the first place on the principal value. But there would be no right to repayment in a case where duty was levied on the capital value of personal property, by reason of all the beneficiaries, including those contingently entitled, being taxable at the same rate; for in these circumstances the

same amount of duty would have been payable in any event.

It is further provided that no allowance is to be made, in valuing a succession, in respect of any contingent incumbrance thereon; but in the event of such incumbrance taking effect as an actual burden on the interest of the successor he is entitled to a return of a proportionate amount of the duty paid by him, in respect of the amount or value of the incumbrance when taking effect (S. D. A. 1853, s. 35). The Revenue practice is to calculate the apportionment in the same manner as in cases falling under s. 36, *supra*.

Allowances.

Most of the ordinary deductions for Succession Duty purposes have been dealt with in connection with the cases which they affect.

There is a general provision that, in estimating the value of a succession, no allowance is to be made in respect of incumbrances created or incurred by the successor otherwise than in execution of a prior special power of appointment, but allowance is to be made for all other incumbrances (S. D. A. 1853, s. 34). It follows that no allowance can be made for mortgages, etc., created by the deceased tenant for life and the successor in conjunction (whether by means of a joint power of appointment in a re-settlement or otherwise), for so far as they affect the inheritance they must be regarded as created by the successor (*re Peyton* (1861), 7 H. & N. 265). As such mortgages are usually deductible for the purposes of Estate Duty (*Cowley* v. *Inland Revenue Commissioners*, [1899] A. C. 198; p. 152, *supra*), the Succession Duty is generally chargeable to the extent of the mortgage at the higher rates (pp. 448–451). In cases where the successor is the spouse, ancestor or lineal issue of the predecessor and

the payment of Estate Duty procures exemption from Succession Duty at 1 per cent., the result is that Estate Duty alone is payable on the property less the mortgage, and Succession Duty at 1½ per cent. on the amount of the mortgage (*re Hamilton* (1905), 39 I. L. T. 272). Where entailed estates in Scotland were incumbered by the previous heir of entail in possession with the consent of the successor as a subsequent heir, the incumbrance was not considered to have been created by the successor for the present purpose, and he was held to be entitled to an allowance (*Lord Advocate* v. *Glasgow* (1875), 2 Rett. 317).

If the expectant successor who created the incumbrance should die before the succession falls into possession, the new successor is entitled *primâ facie* to deduct the incumbrance in his account.

Where a successor, before coming into possession, has laid out moneys in the substantial repair or improvement of real property (including leaseholds), comprised in his succession, allowance is to be made in respect thereof (s. 34). This would not apply to ordinary routine repairs, such as would normally be carried out by the tenant for life in possession.

Where a successor on taking a succession has to give up or is deprived of other property, he is entitled to have an allowance made in his account in respect of the property given up, provided that the property given up was acquired by the successor under a title not conferring a succession on him, and passes from the successor to some other person (S. D. A. 1853, s. 38, as amended by Customs & Inland Revenue Act, 1889, s. 10 (1)).

Mistake.

Where it is proved to the satisfaction of the Commissioners that any duty paid on account of any succession, not being due from the person paying it, was paid

by mistake or in respect of property which the successor has been unable to recover, or from or of which he has been evicted or deprived by any superior title, or that for any other reason the duty ought to be refunded, the Commissioners are to refund it to the person entitled to it (S. D. A. 1853, s. 37).

Composition.

Where the succession is such that the value thereof cannot be fairly ascertained, or there are other complications, the Commissioners are authorised to compound the duty on such terms as they think fit and they may, in special cases, enlarge the time for payment of any duty (S. D. A. 1853, s. 39). Accountable persons are expressly authorised to compound (s. 44). The general powers of compounding and remitting duties and interest described at pp. 356–357 also apply to Succession Duty.

Commutations.

The Commissioners may also, on the application of the parties accountable, commute Succession Duty presumptively payable (S. D. A. 1853, s. 41, and Customs & Inland Revenue Act, 1880, s. 11). All accountable persons are expressly authorised to commute by s. 44 of the Act of 1853. The power to commute is exercised where there has been a sale or other dealing with the property which renders it desirable to get rid of the charge of Succession Duty. Thus, if *A* is life tenant of a fund, and *B* entitled on his death, and they agree to divide up the fund in *A's* lifetime, the trustees of the settlement would not be safe in paying over the money until the duty presumptively payable on *A's* death had been provided for. Application should, therefore, in such case be made to the Commissioners to commute the duty. The duty is assessed on the then capital value of the fund and discounted at 4 per cent. for the

expectancy of *A's* life. In such case, where *A* receives as his share a sum approximately equal to the value of his life interest, no Estate Duty is payable on his death. If, however, he surrendered his life interest to *B* and died within three years, Estate Duty would be payable, and the trustees should retain a portion of the fund to meet such a contingency. If the life tenant survives the three years, and the Succession Duty has been commuted, the sum retained can safely be paid over.

It should be noted that where during the lifetime of the life tenant the property is sold under a trust or power of sale under the instrument creating the succession, the charge of Succession Duty presumptively payable on the life tenant's death shifts from the property to the proceeds of sale and in such cases, therefore, as it is not an incumbrance on the property in the hands of the purchaser, it is not necessary to commute. The same result follows where settled land is sold under the provisions of the S. L. A. 1925, or is compulsorily acquired by a public authority or company. (*See Protection of Purchasers,* pp. 504–505, *infra.*)

If the *first succession* under the settlement arose before the 30th April, 1909, the duty to be commuted will be payable at the old rates (pp. 442–448).

If Estate Duty is not also commuted, and the property has not previously borne Estate Duty during the currency of the settlement, the *higher rates* of 1888 are chargeable (pp. 448–451).

If Estate Duty either is commuted with reference to the prospective death or has been paid on a previous death, Succession Duty at 1 per cent. is not payable unless (1) the first succession arose or will arise on a death on or after the 30th April, 1909, *and* (2) the whole property passing on that death exceeded or will exceed £15,000, *and* (3) the £1,000 and £2,000 limits of individual benefit have been or will be exceeded. Where

Estate Duty is being commuted and it is doubtful whether the £15,000 or other limit will be exceeded or not, the appropriate course is to set aside a fund to provide for the possible Succession Duty at 1 per cent. If it is essential to dispose of the charge, the Succession Duty in such a case may be commuted, but it will not be returnable in any event. It should be noted that the spouse of the predecessor is never chargeable with Succession Duty (even if no Estate Duty is paid) except in post-1909 cases where the limits are exceeded.

A previous payment of Probate Duty or Inventory Duty secures, in the same way as Estate Duty, *primâ facie* exemption from Succession Duty at 1 per cent.

For further particulars of the above exemptions, *see* pp. 518–529, *infra*.

Where Succession Duty alone is commuted, at a rate which would not be chargeable if Estate Duty were paid, and Estate Duty subsequently becomes payable (usually by reason of a death within three years), the commuted duty, or so much thereof as would not have been chargeable if Estate Duty had been paid in the first instance, is allowed against the Estate Duty.

Successor also the Predecessor.

In general a successor is not chargeable with duty upon a succession taken under a disposition made by himself (S. D. A. 1853, s. 12). For instance: *A*, being entitled in possession to property, settles it on *B* for life and then on himself absolutely. On *B's* death no Succession Duty is payable by *A*, as he succeeds under a disposition made by himself.

There are two exceptions to the rule: (*a*) where at the time of the disposition the property is in reversion and the life tenant dies during the continuance of the disposition; and (*b*) on the extinction or determination by a death of a charge or limited interest created by the

successor, where at the date of the creation of such charge or limited interest he was entitled to the property subject thereto in reversion (*ibid.*). In these excepted cases it is provided that duty is to be paid at the same rate as it would have been payable if no disposition had been made by the original successor. Thus *A* devised real estate to his brother *B* for life and then to *B's* son *C* in tail. *B* and *C* disentail and re-settle the property on *B* for life, in restoration of his former interest, then on *C* for life and on *C's* death on his eldest son in tail. *C* in such cases becomes entitled on *B's* death under his own disposition. He is, however, liable to duty as on a succession derived from his uncle *A* as predecessor (*A.-G.* v. *Sibthorpe* (1858), 3 H. & N. 424; *Braybrooke* v. *A.-G.* (1861), 9 H. L. C. 150; *A.-G.* v. *Floyer* (1862), 9 H. L. C. 477).

Alienated and Transmitted Successions.

In considering the position which arises where a remainderman either alienates his interest or dies, before the property falls into possession, the starting points are the fact that the reversionary interest was a *succession* as soon as it came into existence, and the principle, *once a succession, always a succession,* discussed on pp. 415–417, *supra.* There are three general rules:—

(1) If, before the original successor has become entitled in possession, the succession has "become vested by alienation or by any title not conferring a new succession in any other person, then the duty payable in respect thereof shall be paid at the same rate and time as the same would have been payable if no such alienation had been made or derivative title created" (S. D. A. 1853, s. 15). For example, property is settled on *A* for life with remainder to *B* absolutely. *B* sells or gives his reversion to *C* absolutely. On *A's* death *C*

pays duty at the rate *B* would have paid. *C*, in fact, *is the successor* (s. 2). Consequently, if the duty is assessable by way of life interest (as, for instance, in the case of real property where the reversion was sold before the F. A. 1894), the age to be taken is that of the alienee, not of the original successor (*Northumberland* v. *A.-G.*, [1905] A. C. 406). In fact, in cases where the original successor was entitled absolutely, it makes no difference whether he is living at the life tenant's death or not (*Solicitor-General* v. *Law Reversionary Interest Society* (1873), L. R. 8 Ex. 233). These statements do not apply to duty payable on the cesser of outstanding interests or falling-in of leases in the special case where a successor has sold the property subject to the outstanding interests or leases (pp. 428–430).

(2) In the case of personal property (excluding leaseholds), where a successor's interest, before he has become entitled in possession, has passed by reason of death to another successor, only one duty is payable in respect of such interest: it is due from the successor who first becomes entitled in possession, but is leviable at the highest rate which, if every successor had been liable to duty, would have been payable by any of them (S. D. A. 1853, s. 14). For example, *A* by deed settled a fund on trust for his sister *B* for life and then for *B's* son *C* absolutely. *C* by deed settled his reversion on trust for himself for life and then for his (*C's*) son, *D*, absolutely. *C* died in *B's* lifetime. On *B's* death there are two successions, one under the original disposition and the other under *C's* disposition. Only one duty is chargeable, viz., against *D*, but the rate is the 5 per cent., which *C* would have paid, although *D's* own predecessor was his father, *C*.

This rule is frequently over-ridden by the provision that no person chargeable with Legacy Duty shall be

chargeable also with Succession Duty in respect of the same acquisition of the same property (S. D. A. 1853, s. 18; p. 514, *infra*). If *C*, in the above example, had died in *B's* lifetime, leaving his reversion by will to *D*, so that Legacy Duty was payable, that claim would prevail over the claim for Succession Duty, and the Legacy Duty alone would be levied.

(3) Where a succession to real property (including leaseholds) is transmitted on death before it falls into possession, the original succession is *displaced* and Succession Duty is payable only on the *new succession* of the successor who becomes entitled in possession, derived (normally) from the original successor. The basis of this rule is that under the S. D. A. 1853, s. 21, the interest of a successor in real property was valued (even if he took absolutely) as an annuity for his life, equivalent to the annual value of the property. If he died before coming into possession (and without having alienated), the value of his interest was *nil*, leaving to be taxed only the *new succession* of his devisee or heir. The F. A. 1894, s. 18, provided that the value of a succession to real property, where the successor is competent to dispose, shall be the principal value of the property; but it is not considered to have had the effect of imposing duty on a succession which had *no* value—and was notionally non-existent—on the old basis.

Consequently, if *X* by deed or will settles a house on *A* for life with remainder to *B* in fee simple, and *B* dies in the lifetime of *A*, having devised the house by his will to *C*, the *new succession* of *C* under the will of *B* is said to *displace* the original succession of *B* (derived from *X*), and Succession Duty is payable only under *B's* will. Moreover, if for any reason *B's* estate is exempt from Succession Duty (for instance, if it is under £1,000, or if it is under £15,000 and *C* is *B's*

widow or child), the house escapes Succession Duty altogether.

A devise of real estate to a child or other issue of the testator, who dies before him leaving issue, so that the devise is preserved from lapse by s. 33 of the Wills Act, 1837, is *not* a *displaced succession*. The Act achieves its object by making the property devolve under the child's will or intestacy, as if the child had died immediately *after* the testator. Two payments of Succession Duty may thus be involved: first in connection with the death of the ancestor, in respect of the succession taken by the child (he being treated as having survived the ancestor, and the latter being the predecessor), and, secondly, in connection with the death of the child in respect of the succession taken by the person entitled under the child's will or intestacy (the child being the predecessor). But if Estate Duty has been paid, Succession Duty at 1 per cent. is not claimed on the latter succession, unless the child's estate apart from the accretion under the above provision exceeds £15,000 in value.

A subsidiary point, which may arise under all or any of the three main rules, is that if, as the result of alienation or transmission, the successor who becomes entitled in possession takes for life only, then the duty is charged on the value of his life interest. For example, property is settled on *A* for life and then on *B* absolutely. (1) *B* sells his reversion to *C*. *C* then settles it on himself for life with remainder to *D*. On *A's* death *C* pays Succession Duty on the value for his own life, at the rate appropriate to *B*. Or (2) *B* settles the property (being personalty) on himself for life, then on *E* for life, and then on *F*. *B* dies in *A's* lifetime. On *A's* death *E* pays duty on the value for his own life, at the rate appropriate to *B* or to himself, whichever is higher. Or (3) *B* dies in *A's* lifetime, having devised

the property (being realty) to *G* for life with remainder to *H*. On *A's* death *G* pays duty on the value for his own life, at the rate appropriate to his relationship to *B*. Further duties would be payable on the deaths of *C*, *E* and *G*.

Distinction between Alienation and New Succession.

In the examples given above, the question, in which category the case falls, presents no difficulty. The dividing line, however, is not easy to draw, especially under re-settlements. The following general principles have been laid down by the House of Lords:—

> "Grammatically, the words 'not conferring a new succession' apply only to the word 'title,' and should be so construed; but whether they are or are not applied to the word 'alienation,' I think that word in itself *primâ facie* means and should be construed as meaning only transfers *inter vivos* (either gratuitous or for value). The word is not apt to describe the passing of property from the dead hand, either by will or by intestacy. I think that a new succession can only be conferred by a new disposition or devolution by law to take effect on death, and conversely every derivative title by reason of death confers a new succession under s. 2 of the Act . . ." (*Northumberland* v. *A.-G.*, [1905] A. C. 406, per Lord Davey, at pp. 416–417 of the report). This serves to establish that a disposition which is in effect a transfer *inter vivos* is an alienation, notwithstanding that it may incidentally confer a theoretical new succession. A supposititious example (with parties *W*, *X*, *Y* and *Z*) is given below.
>
> "I can find no warrant in the statute for a new Succession Duty being leviable upon the same

> property or money where no new death has created the right to such succession" (*Wolverton* v. *A.-G.*, [1898] A. C. 535, per Lord Halsbury, L.C., at p. 544).
>
> "I can see nothing either in the terms of the section (s. 15) or in the reason of the thing to suggest that an alienation by instrument *inter vivos*, which merely transferred the interest of the successor or some part of it to some other person, would create a new succession. In such a case the same property passes into possession on the same death, and though by a transaction *inter vivos* another person is substituted for the original successor, I do not think it can reasonably be said that 'a new succession' was thereby conferred" (*ibid.*, per Lord Herschell, at p. 555 of the report).

In this case (*Wolverton*), a peer bequeathed his residuary personal estate on trust for his wife for life and on her death for his nephew, *A*, if then living, whom failing, for the person who should then be the testator's right heir. *A* died without issue; five nieces thereupon became co-heiresses of the testator, while another nephew, *B*, succeeded to the title. To make provision for the title, the widow assigned her life interest in certain securities forming part of the testator's residuary estate and the nieces and *B* respectively assigned their contingent interests in the whole residuary estate, upon trust, *inter alia*, during the life of the widow to pay an annuity of £15,000 to *B* for life, and after the death of the widow to "continue to pay the said annuity of £15,000," until certain events, to the person for the time being holding the title. On the widow's death the nieces paid Legacy Duty on the whole residuary estate. The Crown, on the previously

accepted view that an alienation meant a sale, not a gift, and on the further view that the annuity after the widow's death was substantially a different thing from the annuity in her lifetime, claimed in addition Succession Duty from *B* in respect of the annuity as a succession derived from the nieces and/or the widow. *Held*, that *B* was merely the alienee of part of the succession of the nieces (any legacy being, incidentally, a succession), and that the payment of Legacy Duty in respect of the whole succession exempted *B* from Succession Duty as alienee.

An example of a title, not being an alienation, which does not confer a new succession, is afforded by *A.-G.* v. *Rushton* (1864), 2 H. & C. 812, where a testator dying in 1832 devised real property to his wife for life, with remainder to a stranger *C*, who died intestate in 1844, leaving a son, *D*, as his heir-at-law. On the widow's death in 1859, Succession Duty was held to be payable by *D* at 10 per cent. A modern example would perhaps be a case where a reversionary interest, in moveable property under a British settlement, was settled by and devolved under a foreign settlement. The *de facto* "successions" under the pre-1853 intestacy and the foreign disposition are not "successions" within the meaning of the Act. Lord Davey's last observation, *supra*, refers obviously to British titles since 1853.

The leading case on *new succession* is *A.-G.* v. *Cecil* (1870), L. R. 5 Ex. 263. *E*, a tenant for life, and his son, *F*, the tenant in tail in remainder, disentailed the estates and re-settled them to such uses as they should jointly appoint, and subject thereto, to the uses of the prior settlement. They afterwards appointed the estates to a trustee for a term of 1,000 years after the death of *E* on trust to raise £20,000 for *G*, a younger son of *E*. *F* died unmarried in the lifetime

of *E*. On *E's* death it was held that *G* was chargeable with Succession Duty at 3 per cent. on his £20,000, as a new succession derived from *F*. The Court took the view that as the portion and term were not created out of the original succession, *G* could not be an alienee thereof.

A.-G. v. *Cecil* was followed by the House of Lords in *Charlton* v. *A.-G.* (1879), 4 A. C. 427; a similar result had previously been arrived at, without special reference to s. 15, in *A.-G.* v. *Smythe* (1862), 9 H. L. C. 497. In each case the original tenant in tail predeceased the life tenant, as in *A.-G.* v. *Cecil,* and, as will be shown later, the House of Lords in *Wolverton* v. *A.-G.* treated that fact as a distinguishing feature.

In *A.-G.* v. *Assheton-Smith,* [1924] 2 K. B. 25, *A.-G.* v. *Cecil* was followed on the footing that *the death of the original tenant in tail was not material,* the real point being that there was *no alienation at all.* A testatrix had settled estates on a stranger, *H,* for life, with remainder to his son, *J,* in tail. *H* and *J* disentailed, and under a joint power in the disentailing deed appointed *inter alia* to *H* for life, on his death a jointure to *K* (wife of *H* and stepmother of *J*), and subject thereto to *J* for life, with remainders over. On *H's* death, *J* and *K* were living, and the Crown claimed Succession Duty at 10 per cent. from *K* as partial alienee of *J*. Apart from the interpretation of the *Cecil Case,* the actual decision was simply that *K* was not liable for duty at 10 per cent. as alienee. "When and from whom the 10 per cent. duty, which attached to the entirety of the original succession, is or will be payable is not now in question" (per Rowlatt, J., at p. 34 of the report). It is difficult to reconcile the decision with the other authorities, particularly the *Wolverton Case;* and it is considered to apply only where the material facts are the same, viz., where a

tenant in tail disentails, and, under powers created by the disentailing assurance, charges the property with annuities or capital sums in favour of volunteers. It is not considered to apply to a transfer of the whole or an aliquot part of the expectant succession, whether absolutely or for life.

The chief authority as to the effect of a death under the new title is *Northumberland* v. *A.-G.*, [1905] A. C. 406. There *L*, a tenant for life, and *M*, the tenant in tail in remainder, disentailed the estates and re-settled them to such uses as they should jointly appoint, with remainders over. Subsequently in exercise of the joint power they appointed part of the estates to *N*, a purchaser, in fee simple in possession. *N* died, having devised the property to his wife *P*. *P* also died and under her will the property passed to her daughter *Q*, who paid Succession Duty at 1½ per cent. in respect of her succession from *P*. On the death of *L*, leaving *M* surviving, it was held that Succession Duty was payable by *Q* as alienee of part of the original succession of *M*, at the rate which *M* would have paid. The principle, *once a succession, always a succession*, has been dealt with already. For the present purpose the material point is that the deaths of *N* and *P* did not displace the original succession. *N* "became entitled to a fee simple in possession, which became the subject of other dispositions and devolutions conferring successions depending on other events on which duty was properly payable; but that was not a satisfaction of the duty payable in the event of the death of [*L*], which became a charge on the property, and all that can be said is that [*N*] purchased a property subject to an incumbrance" (per Lord Davey at p. 418 of the report). The sale of the property for an estate *in possession*, as distinguished from a sale of the *succession* only, which from one standpoint merely involved the *acceleration*

of the succession, was an essential feature of the case. The transferee of a succession (whether purchaser or donee) becomes himself a successor; and if the transferee of a succession (*only* the succession) to real property dies before he becomes entitled to the property in possession, his devisee (or other beneficiary) would take a new succession from him, exactly as would the devisee of an original successor so dying (per Lord Davey, at p. 417). For example, *R* settles real estate on *S* for life, with remainder to *T*. *T* sells his interest to *U*, who dies, devising all his real estate to *V*. On the death of *S*, *V* pays Succession Duty on a new succession, derived from *U*, which displaces the original succession of *T*, derived from *R*. The result would be the same if *T* had been a tenant in tail, and it would make no difference whether he survived *S* or not. But the death under the new title, to displace the old succession, must involve a passing from the dead hand. Suppose real estate is settled on *W* for life, with remainder to *X* in tail. They disentail, and under the usual joint power of appointment, contained in the disentailing deed, voluntarily appoint the property, subject to the life interest of *W*, to *Y* for life, with remainder to *Z*. *Y* dies in the lifetime of *W*, but *X* and *Z* survive *W*. On *W's* death, *Z* takes as alienee of *X*. The substance of the matter is a transfer of the succession of one living person, *X*, to another living person, *Z*—not a passing from the dead hand.

Another possible mixture of alienation and new succession is a mortgage of a succession, followed by the death of the mortgagor-successor before the property comes into possession. The deceased himself would not have been entitled to deduct the mortgage in his Succession Duty account, but the new successor (*primâ facie*) can deduct it (pp. 467–468). The old succession is then displaced only to the extent of the new succession,

and in strictness the mortgagee is chargeable with duty as an alienee *pro tanto,* at any rate if he enforces his security. In practice, however, duty is not claimed from the mortgagee in such cases.

To sum up, the choice lies between—

A.—(1) Alienation (even where it confers incidentally a theoretical new succession), and

(2) Any other title *not* conferring a new succession.

B.—An effectual new succession.

The rate of duty in cases A is determined by the old title; in case B the new title determines the rate for real property, while personalty is charged at the highest of the rates involved.

If the expectant successor is entitled absolutely and parts with his entire interest, it can, as already stated, make no difference whether he survives the life tenant or not (*Solicitor-General* v. *Law Reversionary Interest Society* (1873), L. R. 8 Ex. 233).

In re-settlement cases the estate or interest of the alienee or new successor, whichever he may prove to be, is usually conferred by means of the joint power of appointment in a disentailing assurance made by the life tenant and tenant in tail in remainder, and either consists of the fee simple estate created by the disentailing assurance or is carved out of that fee simple. But the alienated succession, in respect of which an alienee is chargeable with Succession Duty, is the original succession of the tenant in tail under the old settlement. It is this estate tail which is *once a succession, always a succession.* It was impossible to say with reason in *A.-G.* v. *Cecil, supra*, that *G* succeeded to the £20,000 by reason of the vesting in him by alienation of the succession to which *F* was entitled under the original settlement: if the entire interest of *F* under that settlement had been conveyed to *G,* he would in the event

have taken nothing (per Lord Herschell in *Wolverton* v. *A.-G., supra,* at p. 556 of the report).

It seems to follow that no one can be charged with Succession Duty as alienee of a succession in tail where the original tenant in tail is dead. The death of the tenant in tail cannot alter *ex post facto* the nature of the disposition by him; but if it is an alienation, the alienated succession may be displaced or destroyed by his death. If a new succession can be found to replace it, the new succession is taxable. In the example above, with *W*, *X*, *Y* and *Z* as parties, if *X* had predeceased *W*, *Z* could clearly have been charged with duty on *W's* death in respect of a new succession derived from *X*. In the *Northumberland Case* itself, if *M* had predeceased *L*, and the present view is correct, *Q* would have paid no duty on *L's* death, the new succession, if any, being a matter of purchase.

Conversely, subject to the exception created by *A.-G.* v. *Assheton-Smith*, any dealing with the succession of a *living* tenant in tail is an alienation.

Acceleration.

Where the title to any succession is accelerated by the surrender or extinction of any prior interests, it is provided that the duty is to be paid at the same time and in the same manner as it would have been paid if no such acceleration had taken place (S. D. A. 1853, s. 15). For example, where property is settled on *A* for life, with remainder to *B*, and *A* during his lifetime releases his life interest so that *B* becomes entitled in possession, Succession Duty is not avoided; on the other hand it does not become at once payable, but can be deferred until the death of *A*.

Advances out of settled property, made with the consent of the life tenant, under a power in the settlement, are accelerated successions: they involve the

extinction of the prior interest (*re Drury Lowe's Marriage Settlement, ex parte Sitwell* (1888), 21 Q. B. D. 466). So also is the propulsion of a Scottish entailed estate by the heir in possession to the heir next entitled (*Buchan* v. *Lord Advocate*, [1909] A. C. 166). But a payment to an apparent heir, for his consent to the creation of incumbrances by the heir of entail in possession, is not an accelerated succession (*Lord Advocate* v. *Glasgow* (1875), 2 Rett. 317). Nor is the exercise of an over-riding power of appointment under a settlement an acceleration (*A.-G.* v. *Selborne*, [1902] 1 K. B. 388, p. 416, *supra*).

The proper course in cases of this kind, where property is taken out of settlement, is to apply to commute the duty payable, so that no question can arise on the life tenant's death: *see* pp. 469–471, *supra*.

The value for Succession Duty in acceleration cases (where there has been no commutation) is the value on which duty would have been payable if no acceleration had taken place (*i.e.*, the value at the death of the life tenant), and therefore where investments were transferred to the beneficiary they should be accounted for at their value at the death of the life tenant, but if investments were sold out by the trustees to provide a specific sum for the expectant successor, Succession Duty is payable on such sum.

If the transaction was carried out more than three years before the life tenant's death, so that the property escapes Estate Duty, and it has not borne Estate Duty on any previous death, the Succession Duty, whether commuted or not, is payable at the *higher rates* (pp. 448–451).

A succession to real property arises within the meaning of the F. A. 1894, s. 18, on the death on which the successor becomes beneficially entitled in possession, and not at the date when the disposition, which brings it

into being, takes effect (F. A. 1925, s. 24, confirming *A.-G.* v. *Anderton*, [1921] 1 K. B. 159). If, therefore, such a succession is accelerated and the life tenant dies after the F. A. 1894, Succession Duty is payable on the basis of the principal value of the real property even though the succession was conferred by the will of a testator who died before the F. A. 1894. It would, however, be otherwise if the successor, before becoming entitled in possession, had cut down his absolute interest to a life interest. In that case such duty would be charged only on the value of such interest.

Enlargement of Interest.

Though the underlying principles are merely the time for payment of the duty and the value of the succession, it is convenient to consider separately the case where a beneficiary, who already has a limited interest in possession, acquires on a death a further interest in the same property. If a fund is settled by *A* on *B* for life, then on *B's* husband, *C*, for life, with remainder to their issue, and in default for *B* absolutely, then, if *C* dies in the lifetime of *B* and there is no issue, *B's* interest is said to be "enlarged" into full ownership, and the accession of benefit is charged with Succession Duty.

The leading case on the point is *A.-G.* v. *Robertson*, [1893] 1 Q. B. 293, where, the facts being as stated above and *C* having died in 1880, it was held that *B* took a succession on *C's* death within the meaning of the S. D. A. 1853, s. 2; that the duty was payable on that death and not postponed by s. 20 of the Act until the determination of the interest which *B* already had; but that allowance must be made under s. 38 of the Act for the value of the life interest of which *B* was deprived upon taking the capital.

Allowance can be made under the last-mentioned section, in the case of deaths on or after the 1st June,

1889, only where the property, which the successor relinquishes, passes to some other person (Customs and Inland Revenue Act, 1889, s. 10 (1)). In enlargement cases the original interest, *ex hypothesi,* does not so pass but merges in the succession. In practice, however, the Revenue claims Succession Duty only upon the difference between the capital value and the value of the successor's existing interest, on the view that, apart from s. 38, what the successor gets on the death is merely that difference.

The same principles would apply if the beneficiary in possession acquired, instead of the capital, an extension of his limited interest.

If a limited owner, having a general power of appointment, enlarges his interest by the exercise of such power, the case will usually fall within s. 4 of the S. D. A. 1853 (pp. 421–423, *supra*).

The Commissioners may, if they think fit, on the application of the accountable parties, accept in satisfaction of the whole or part of the Succession Duty such part of the property chargeable as may be agreed upon (F. A. 1910, s. 56; p. 160).

CHAPTER XIII.

PERSONS ACCOUNTABLE AND INCIDENCE OF THE DUTY.

Persons liable under the S. D. A. 1853.

The successor himself is personally accountable for Succession Duty in all cases, and is a Crown debtor for the amount (S. D. A. 1853, s. 42). So also are the following persons to the extent of the property or funds actually received or disposed of by them, viz., any trustee, guardian, committee, tutor, curator, or husband in whom respectively the property or the management thereof is vested, and every person in whom it is vested by alienation or other derivative title at the time when the succession becomes an interest in possession (s. 44). One who has become personally accountable, whether as successor, trustee or otherwise, cannot get rid of his liability by parting with the property. Moreover, if he dies, the unpaid duty is a debt due from his estate, for which (to the extent of his assets) his representatives are personally accountable.

The successor for the present purpose is the person beneficially entitled to the property or the income thereof at the time when the duty becomes chargeable (S. D. A. 1853, s. 2; *Northumberland* v. *A.-G.*, [1905] A. C. 406). This is so whether he is (*a*) the person designated as successor under the original title, (*b*) the person entitled to a *transmitted* succession in personal property (p. 473, *supra*), (*c*) an alienee of the succession (p. 472, *supra*), or (*d*) a person taking a *new* succession (p. 474, *supra*).

Though the point does not materially affect his liability, an alienee of the *succession* is accountable as successor under s. 42, and not merely as a person in whom the property is vested by alienation under s. 44. The latter description applies, for example, to the owner for the time being of real property charged with a legacy or annuity or rent-charge, who is accordingly accountable for Succession Duty in respect of the interest so charged. Prior to the Customs and Inland Revenue Act, 1888, s. 21 (2), such interests were liable to Legacy Duty, for which the landowner was expressly made responsible (L. D. A. 1805, s. 5).

The term "trustee" includes an executor or administrator and any person administering property affected by any express or implied trust (S. D. A. 1853, s. 1). Agents, such as solicitors, estate agents or bailiffs, who merely collect the rents or manage the property on behalf of the owner, are not accountable, nor would a bare trustee be accountable, *i.e.*, a trustee who has no power of management but whose only duty is to convey the legal estate. A husband, as such, is liable only in cases where the Married Women's Property Acts do not apply.

In cases where the property is vested in trustees, they, rather than the beneficiaries, are usually the appropriate persons to see to the payment of duties. If they transfer or distribute the property without doing so, they remain personally liable; and in practice they should, before parting with the property, obtain the assurance of the Revenue that all claims are satisfied or make proper provision for all claims left outstanding. As between trustees and successor, however, the latter may be entitled to render the accounts himself if he wishes, at any rate where he becomes absolutely entitled to the property as a whole (*re Dodd, Dodd* v. *Dodd,* [1918] W. N. 100). Where the succession account of an

equitable life interest in real property was passed by the trustees, the costs were held to be payable by the tenant for life (*Cowley* v. *Wellesley* (1866), 35 Beav. 635, 642). It may, in fact, be taken as a general rule that costs properly incurred by an accountable person must be borne in the same manner as the duty itself. If trustees negligently leave Succession Duty unpaid, misapplying the moneys available for the purpose, they are personally liable to repay to a successor the amount of the duty which he has been obliged to pay, but if they have acted innocently they will not be held liable for the interest on the duty (*Brown* v. *Smith* (1875), 46 L. J. Ch. 866).

Where any proceedings are pending in Court for the administration of any property chargeable with Succession Duty, the Court itself is to provide out of the property in its possession or control for the payment of duty to the Commissioners (S. D. A. 1853, s. 53, *and see* pp. 375–377).

Where settled property is being sold and the proceeds divided up, the trustees should require the duties that are presumptively payable to be commuted, or, if this is not done, they should retain a sufficient sum to provide for the future duties. So also where a life interest is released or where advances are made out of settled property during the lifetime of the tenant for life. If the property is in the control of the Court and the duty is not commuted, a sufficient sum should remain in Court to cover it (*Bayley* v. *Tindal* (1853), 2 Eq. R. 538). The trustees by whom the advances are made or their personal representatives are accountable for the duty, and the fact that the money was in Court and paid out under Order of Court, without provision for duty, does not protect them from liability (*A.-G.* v. *Chambres*, [1921] 1 K. B. 173).

As regards timber (which is taxable only when sold), the persons accountable in respect of the proceeds are

the owners or trustees of the land (F. A. 1910, s. 61 (5); F. A. 1912, s. 9).

Any person who, having received a sum of money as and for any duty, fails to apply the money in due payment and improperly withholds it, is personally accountable for the amount (Stamp Duties Management Act, 1891, s. 2).

Persons Liable under the Property Acts of 1925.

In the case of land in England and Wales, the liability for *all death duties* payable on deaths after 1925 is revised by the L. P. A. 1925, ss. 16 and 17, and the L. R. A. 1925, s. 73. These sections have already been discussed in Chapter III, headings B and D. Shortly, a personal representative is accountable for all death duties in respect of land (including settled land) devolving on or vesting in him. In every other case the estate owner or registered proprietor (not being a purchaser who has bought free from the charge for duties) is accountable for all duties in respect of his estate in the land or any interest therein which he can over-reach. Persons in a fiduciary capacity are not liable for duty in excess of the available assets (including land). The accountable persons have all existing statutory powers for raising the duty and costs. The Acts do not affect the remedies of the Commissioners against any person other than a purchaser: the beneficiaries are still liable concurrently with the personal representatives, etc., and, except in favour of a purchaser, any conveyance or disposition takes effect subject to the charge for duties and interest, whether registered or not. Nor do the Acts affect the ultimate incidence of the duty, the beneficiaries being liable to repay the amount, with interest and costs, to the accountable person who makes the payment.

The provisions are less important than might appear, for in most cases the same person would be accountable

as a "trustee" under the S. D. A. 1853. The effective change is in the law governing the devolution of land, rather than in the law as to liability for Succession Duty. Thus in the case of settled land, which would formerly have vested directly in the next tenant for life, the persons now primarily accountable for Succession Duty, in respect of jointures and portions arising on the death as well in respect of the main succession, are the settled land executors of the deceased life tenant. But the responsibility of a personal representative, as such, extends only to duties chargeable on the death of the person whom he represents, not on subsequent devolutions. A point which calls for notice is the liability of an ordinary executor or administrator for duties in respect of land which *was* settled but has ceased to be settled on the death, *i.e.*, in cases governed by the decision in *re Bridgett and Hayes' Contract*, [1928] 1 Ch. 163.

Facilities for Raising the Duty.

All persons accountable for duty under the S. D. A. 1853 are authorised to compound or pay in advance or commute any duty, and to retain out of the property the amount of the duty, or to raise such amount, and the incidental expenses at interest on the security of the property, with power to give effectual discharges for the same; and any such security has priority over any charge or incumbrance created by the successor (s. 44). When the trustees of a Scottish will, which contained no power to borrow, were unable to find a lender willing to advance money for the purpose of paying (*inter alia*) Succession Duty, without the authority of the Court, the Court granted them authority to burden the estate by way of bond and disposition in security for the amount of the duty and the expenses of settling the same, but not the expenses of the petition (*Harris's Trustees* v. *Harris* (1904), 6 Fra. 470).

The L. P. A. 1925, s. 16 (3), and L. R. A. 1925, s. 73 (10), confer on a personal representative, estate owner or registered proprietor, accountable under those Acts, for the purpose of raising the duty and the costs of raising the same, all powers conferred by any Statute for raising the duty.

The L. P. A. 1925, s. 18 (1), which applies to registered as well as unregistered land, provides that capital money liable to be laid out in the purchase of land to be settled in the same manner as the land in respect of which duty is payable, and personal estate held on the same trusts as land subject to a trust for sale, may, by the direction of the tenant for life, statutory owner or trustee for sale who is accountable, be applied in paying the duties and costs in respect of such land. The L. R. A. 1925, s. 73 (12), is to the same effect, except that the procedure may be adopted by the direction of "the person accountable." It would seem that a settled land executor can where the land is registered, but cannot in other cases, require the death duties on the land to be discharged out of capital moneys in the hands of the trustees of the settlement.

The use of these facilities will not shift the ultimate burden of the duty. It is provided by the L. P. A. 1925, s. 18 (2), and L. R. A. 1925, s. 73 (13), that where the duty would not otherwise be payable out of the capital money or personal estate—

(*a*) the amount so paid is to be repaid by the person liable for the duty to the trustees by the same instalments and with the same interest as might have been paid to the Revenue, or, if the land has been sold, might have been paid to the Revenue but for such sale;

(*b*) the interest of the person so liable, remaining subject to the settlement, stands charged with

the repayment of such instalments and interest; and

(c) the trustees are entitled to recover and receive any excess of duty which may become repayable by the Revenue.

This does not enable Succession Duty on *A's* succession to Blackacre to be paid out of Whiteacre, which is comprised in *B's* succession, even if both take under the same disposition. The important point is that capital money may be used, either in the case of settled land or of a settlement on trust for sale, to pay duty on a life interest. For example, property consisting of land and capital money was settled by deed on the deceased for life. On his death a rent-charge became payable to *C* for life and subject thereto the property goes to *D* for life with remainder over. The Succession Duties in respect of *C's* and *D's* successions may both be paid by *D's* direction out of the capital moneys. In whatever manner the payment is made to the Revenue, *C* and *D* may repay the amounts (which fall to be borne wholly out of their interests) by instalments according to any of the modes which could be adopted for payment to the Revenue. They still have this option, even if the property is sold, so that any duty not yet paid to the Revenue has become, or would have become, immediately payable under the L. P. A. 1925, s. 17 (3), and L. R. A. 1925, s. 73 (6). If the successor dies within the instalment period, so that less than the full amount of duty is chargeable (p. 463, *supra*), any repayment by the Revenue belongs to the trustees and the repayments by the successor to the trustees either cease or fall to be adjusted accordingly.

The rights of personal representatives to be indemnified against unpaid duties before making a conveyance or giving an assent are dealt with in

Chapter III, heading B. Except in favour of a purchaser of a legal estate, an assent or conveyance does not prejudice the right of the personal representative or any other accountable person to recover the estate or interest to which the assent or conveyance relates or to be indemnified against any duties to which the same would have been subject but for the assent or conveyance (A. E. A. 1925, s. 36 (9)).

Enforcement.

Accountable persons are required by the S. D. A. 1853, s. 45, to give notice to the Revenue of their liability for duty, and at the same time to deliver (1) a full and true account of the property with regard to which they are liable, showing (2) the value, (3) the deductions claimed, (4) the names of the successor and predecessor, (5) their relationship to each other, and (6) all other particulars necessary or proper for enabling the Commissioners to ascertain the duties due. This must be done in the case of personal property at the time of the first payment, delivery, retainer, satisfaction or discharge of the benefit or any part thereof, to or for the benefit of the successor or any person in his right, and in the case of real property when any duty first becomes actually payable. If the Commissioners are dissatisfied with the account and estimate they may, subject to appeal, either (*a*) cause an account and estimate to be taken by persons appointed by themselves and assess the duty accordingly, with power, if the duty so assessed exceeds the duty which would have been payable on the basis of the original return, to charge the expenses of the new account on the successor, or (*b*) to assess the duty on the footing of the original account and such estimate as the Commissioners may place thereon. (The latter power was conferred by the Customs and Inland Revenue Act, 1889, s. 10 (3).)

Penalties for wilful neglect to give notice or deliver accounts at the prescribed time, or to pay the duty, are imposed by the S. D. A. 1853, s. 46.

Accounting parties are obliged, by s. 49, if required by the Commissioners, to produce any books or documents in their custody or control which relate to the account or estimate and may afford any necessary information for the purpose of ascertaining the property and the duty thereon. The Commissioners may also inspect and take copies of any public book. Information obtained under the section is deemed to be confidential.

If an accountable person is dissatisfied with the Commissioners' assessment, he may appeal to the Court under s. 50. He is required in this event to give to the Commissioners notice in writing of his intention within twenty-one days of the assessment and a statement of the grounds of appeal within a further thirty days. If the amount of duty in dispute does not exceed £50 the appeal may be made to the County Court (*see* C. C. Rules, 1903, O. XLII) or Sheriff Court. Procedure under this section is appropriate only where the liability to Succession Duty is admitted, the dispute being confined to the amount. If the dispute relates to the principal value of real property, taxable under the F. A. 1894, s. 18, any appeal should be made under the F. A. 1910, s. 60 (3), and Land Values (Referee) Rules, 1910.

Revenue proceedings in England, where the basis of the claim is challenged, are usually by way of English information. If the validity of the claim is not in dispute, proceedings for the delivery of accounts, or for the payment of assessed duty in the absence of an appeal, are by writ of summons under the Crown Suits &c. Act, 1865, Part V. Proceedings in Scotland are based on the S. D. A. 1853, ss. 47 and 48, and the

Probate Duty Act, 1861—all of which have been repealed, so far as relating to England, by the Crown Suits &c. Act, 1865, s. 53.

Limitation of Liability.

Subject to express exceptions, the liability for unpaid Succession Duty is not affected by lapse of time. It is a Crown debt, and the Statutes of Limitation accordingly do not apply (*A.-G. (I.)* v. *Lordan* (1906), 40 I. L. T. 98).

Protection is afforded by the Customs and Inland Revenue Act, 1889, ss. 13–15, in the following cases:—

(1) Any person may (*a*) deposit with the Commissioners an attested copy (which is free of Stamp Duty) of any document creating a liability to Succession Duty (other than a will which has been proved), for which a receipt is to be given, and (*b*) give notice to the Commissioners of the fact which gives rise to the immediate claim for duty. Notice in the prescribed form ("Entg. No. 23" in England or "S" in Scotland) is delivered in duplicate, and one copy is receipted and returned. No person will then be liable for the duty in question after the expiration of six years from the date of the notice. This protects even the successor.

(2) Under a will admitted to Probate, or a grant of Administration or Confirmation, no person is liable for Succession Duty (or Legacy Duty) after the expiration of six years from the date of the settlement of the account in respect of which the duty is payable, provided that the account was in all respects a full and true account, containing all material facts; and no trustee, executor or administrator is liable after

such six years if it is proved to the satisfaction of the Commissioners that the account was correct to the best of his knowledge, information and belief. Time does not run until actual delivery of the Succession Duty account, even if an Estate Duty account has been rendered in respect of the same devolution of the property (*cf. A.-G.* v. *Montefiore* (1909), 52nd Inland Revenue Report, p. 85). If the account is assessed for payment by instalments, the six-year period is considered to run from the date for payment of the last instalment.

These provisions do not in terms discharge the *property*, but the charge could not practicably be enforced in the absence of personal liability.

Other periods of limitation apply only in favour of purchasers and mortgagees, and are separately discussed below. When a purchaser or mortgagee is protected by s. 12 of the Act of 1889, it is expressly provided that any unpaid duty shall still be payable by the successor or other accountable person, and shall be charged substitutively upon any other estate or interest comprised in the succession and remaining vested in the successor or in any other person in his right or on his behalf (other than the purchaser or mortgagee), and in the case of a mortgage on the equity of redemption. Similarly, when a purchaser, mortgagee, lessee, etc., is protected by the Acts of 1925, the person who conveys or disposes of the property remains personally liable—along with any other accountable persons—and the charge for duty attaches to the proceeds of sale or other consideration (L. P. A. 1925, ss. 16 (4) and 17 (2); L. R. A. 1925, s. 73 (5) and (11)). Incidentally, all unpaid instalments are immediately payable on any conveyance or disposition by which the original charge is over-ridden (s. 17 (3); s. 73 (6)).

Succession Duty as a Charge.

The S. D. A. 1853, s. 42, makes Succession Duty a direct charge on the property.

In the case of personal property (excluding leaseholds) the duty is a first charge on the interest of the successor so long as the property remains in the ownership or control of the successor or of any trustee for him, or of his guardian, committee, tutor or curator.

In the case of real property (including leaseholds) the duty is a first charge on the interest of the successor and of all persons claiming in his right. If he takes absolutely, the duty is a charge on the *corpus* of the property and is not affected by the successor's death (*cf.* S. D. A. 1853, s. 21, and F. A. 1894, s. 18 (1)). If he takes for life, the duty in respect of his life interest is a charge on the property during his life but the charge is destroyed by his death, though his personal representatives and any other accountable persons remain liable for any instalments then due and unpaid. In either case the charge of duty has priority over all charges and interests created by the successor, but it does not affect any other real property of the successor than that comprised in the particular succession. The Commissioners at the request of the successor or any person claiming in his right must accept or make as many separate assessments as are reasonably required in respect of separate properties or defined parts of the same property; and in such case each property stands charged only with the amount of the duty separately assessed in respect thereof (S. D. A. 1853, s. 43). The Commissioners are further authorised, but not obliged, to make a fresh allocation of duty already assessed, and to issue certificates to that effect.

Succession Duty is imposed and charged at the moment when the succession is conferred, namely at the date of the successor's entitlement (*Wolverton* v. *A.-G.*, [1898]

A. C. 535; *Northumberland* v. *A.-G.*, [1905] A. C. 406; *Lord Advocate* v. *Macalister*, [1924] A. C. 586). The charge attaches, therefore, on the execution of the deed, or on the death of the testator or intestate, as the case may be, if an identifiable successor is then in existence, and otherwise as soon as such successor comes into existence. This rule is not affected by the F. A. 1925, s. 24.

A successor is not debarred by the charge from exercising or consenting to the exercise of any power of sale, exchange or partition; in such cases the charge of duty shifts to the successor's interest in the proceeds of sale or substituted property (S. D. A. 1853, s. 42). This provision is further considered below in relation to *purchasers*. The scope of the charge after a partition is illustrated by the Irish case of *re Cruise's Estate* (1871), 5 I. L. T. 195.

An incumbrance created by an accountable person for the purpose of raising Succession Duty and expenses has priority over any charge or incumbrance created by the successor (S. D. A. 1853, s. 44).

Where a charge for duty in connection with a death after 1925 affects non-registered land in England or Wales, it may be registered as a Land Charge (L. C. A. 1925, s. 10 (1), Class D (i)). This can be done only when the death has actually occurred (s. 10 (4)). Registration is important only in relation to *purchasers*: a conveyance to any other person takes effect subject to the charge for duty and interest, whether it is registered or not (L. P. A. 1925, s. 17 (4)). In the case of registered land, notice of the liability is noted on the register: a purchaser takes free from the charge, and other persons subject to the charge, whether notice is entered or not (L. R. A. 1925, s. 73 (1), (2) and (7)). There is also provision for noting liability with regard to registered land in connection with deaths before 1926, the notice in

such cases being effective against a purchaser (L. T. A. 1897, s. 13). The Acts of 1925 are not to impose a charge for duty on leasehold land or render a mortgagee liable in respect of any charge for duty which is not paramount to his mortgage or charge (L. P. A. 1925, s. 16 (6); L. R. A. 1925, s. 73 (14)). The reference to leasehold land has no point as far as Succession Duty is concerned, as there already existed a charge for Succession Duty on such property.

Discharge.

An assessment of Succession Duty in respect of any particular property serves, as already stated, to discharge that property from the Succession Duty attributable to any *other* property, even if comprised in the same succession.

The Commissioners are required to give a stamped receipt for any payment of Succession Duty, and also from time to time, upon the application, for any reasonable purpose approved by the Commissioners, of any person interested in the property affected by the duty, to deliver a certificate of the payment (S. D. A. 1853, s. 51). Certificates can be obtained, for example, for the purpose of an intended sale or mortgage.

As regards non-registered land in England or Wales, when the death occurs after 1925, the Commissioners, on being satisfied that a personal representative or other accountable person has paid or commuted or will pay or commute all death duties for which he is accountable, must, if required by him, give a certificate to that effect, which discharges from any further claim for duty the land to which it extends; and if a Land Charge has been registered the certificate is a sufficient authority to the registrar to cancel such charge (L. P. A. 1925, s. 16 (7)). This certificate covers both Estate Duty and Succession Duty, and is issued only when both duties are

paid or provided for. If, for instance, a life tenant surrendered his interest in favour of the remainderman, and Succession Duty was commuted, the certificate could not be given while there was an open question of Estate Duty in the event of the life tenant's death within three years. As to the form of application for the certificate, *see* p. 311.

In the case of registered land, the Commissioners are required when all claims for duties have been satisfied, or no claims arise, or the Commissioners are satisfied that the duties will be paid or commuted, to notify the fact to the Registrar, who is thereupon to cancel the notice (if any) of the claim (L. R. A. 1925, s. 73 (9)).

Where an executor, administrator or trustee has given notice in writing to the Commissioners for any claim to Succession Duty in respect of any fund in his hands which he intends to distribute and has given them all the particulars they require, he may distribute the fund after satisfying any claim to duty and is entitled to a certificate discharging him from his liability to duty in respect of the fund; but the certificate is not to affect the liability of any person other than the person in whose favour it is expressed to be given (Customs and Inland Revenue Act, 1880, s. 12).

Provisions for the protection of *purchasers* are dealt with separately below.

Liability of Purchasers.

The mode of levying Succession Duty on an alienated succession has been described in Chapter XII (p. 472). It is intended now to consider generally how far a purchaser is concerned with the question of duty, either outstanding in connection with a past death or prospectively payable in connection with a future death.

The purchaser of a reversionary interest is liable for the Succession Duty in respect of the succession which

he acquires (S. D. A. 1853, ss. 15 and 44). "If a person has had a succession conferred upon him, he cannot by parting with it prevent it from being a succession; that is, prevent it from being property liable to the duty" (*Solicitor-General* v. *Law Reversionary Interest Society* (1873), L. R. 8 Ex. 233). In the first place, the duty is imposed and charged at the moment when the succession is conferred (*i.e.,* when the original beneficiary becomes entitled to the reversion), and the purchaser buys subject to the charge. In the second place, the purchaser—who is assumed, of course, to be still entitled to the reversion when it falls into possession—is himself *the successor,* though the rate of duty is that applicable to the original beneficiary. *Primâ facie* the purchaser actually bears the duty: he has no right, in the absence of express agreement, to be reimbursed by his vendor (*Cooper* v. *Trewby* (1860), 28 Beav. 194). A contract to sell a *spes successionis* "free from incumbrances" does not make the vendor liable for the duty (*re Langham's Contract* (1890), 60 L. J. Ch. 110).

A mortgagee of a reversionary interest is not, as such, chargeable with Succession Duty, but if he forecloses he becomes liable. If he sells under his powers of sale, the purchaser becomes liable for the duty, as it is a charge on the property in whosesoever hands it may be.

The purchaser is under the same liability to the Revenue if he buys the subsisting life interest as well as the reversion, even where the life tenant and remainderman have combined to sell the property as a whole. "A succession within the Act once established, no manipulation of the parties afterwards can get rid of it" (*Northumberland* v. *A.-G.,* [1905] A. C. 406). A purchaser of the property as a whole is, of course, entitled to have it conveyed to him free from any charge for duty, past or future, and he should see that any duty

prospectively payable is commuted. This applies to pure personal property as well as to real property (including leaseholds), but it is only in the case of land that this kind of transaction has ever been common. Even in the case of land the point should seldom arise in England since the Property Acts of 1925, the old practice of sale by the tenant for life and remainderman in conjunction being no longer available and conveyances under the S. L. A. 1925 being in effect obligatory. By this means, as will appear later, the charge for duty is shifted to the proceeds of sale.

If the purchaser of a reversion to real property dies before the interest falls into possession, the original succession is displaced by the new succession under the purchaser's will or intestacy, and only one Succession Duty is payable: but if a purchaser of the entire property (life interest plus reversion) dies before the original life tenant, there are two taxable successions, one on the purchaser's death, under his will or intestacy, the other on the former life tenant's death, under the original title (*Northumberland* v. *A.-G.*, pp. 480–481, *supra*).

In the ordinary case where property is sold after the death on which Succession Duty has become payable, the purchaser will not become a successor or otherwise accountable personally: he is concerned only with the possible charge for unpaid duty.

Where real property is subject to outstanding leases and Succession Duty has been paid on a ground rent basis, leaving additional duty to be paid when the leases determine (pp. 428–431, *supra*), a purchaser of the freehold is liable to the Revenue for the additional duty (*A.-G.* v. *Mander* (1896), 65 L. J. Q. B. 246). As between vendor and purchaser the duty is payable by the former (*re Kidd and Gibbons' Contract*, [1893] 1 Ch. 695), and the purchaser is entitled to require that the duty be

commuted; he need not accept a personal indemnity (*re Weston and Thomas's Contract,* [1907] 1 Ch. 244).

Protection of Purchasers.

(1) *Validity of Receipts and Certificates.*—Every receipt and certificate purporting to be in discharge of the whole duty payable for the time being in respect of any succession or part of a succession exonerates a *bona fide* purchaser for valuable consideration, and without notice, from such duty, notwithstanding any suppression or mis-statement in the Succession Duty account or any insufficiency of the assessment (S. D. A. 1853, s. 52).

(2) *Succession not appearing on title.*—A *bona fide* purchaser of property for valuable consideration under a title not appearing to confer a succession is not subject to duty which may be chargeable on the property by reason of any extrinsic circumstances of which he had no notice at the time of the purchase (S. D. A. 1853, s. 52). Valuable consideration includes marriage (*cf.* item (5) below). As to notice, *see* p. 197. A purchaser is protected only in the case of non-disclosure of the *facts* which created a succession, not in the case of mistake as to the construction of a deed or as to the incidence of the duty. The provision applies, for example, where the property is the subject of an undisclosed trust.

(3) *Power of sale—Sale under Settled Land Acts.*—Where settled real property is sold or exchanged under a power to that effect, the charge for duty shifts to the proceeds of sale or substituted property; and the successor is not debarred by the charge on his interest from effectually exercising or consenting to the exercise of such power (S. D. A. 1853, s. 42). If an express power is relied upon, it must be contained in the instrument conferring the succession or some prior instrument. A sale under a power contained in a later deed cannot over-ride the charge for duty in respect of a succession

conferred by an earlier deed. On this point the decision in *Dugdale* v. *Meadows* (1870), L. R. 6 Ch. App. 501, does not appear to be correct. Express powers, such as were common at the time of the Act, have been rendered obsolete in England and Wales by the Settled Land Acts, but sales under these Acts have the same effect of causing the charge of duty to shift to the proceeds (*re Warner's Settled Estates, Warner to Steel* (1881), 17 Ch. D. 711). So also have sales under the powers conferred by the Trusts (Scotland) Act, 1921. The purchaser is protected both from unpaid duty on a past death and also prospective duty on a future death. The same result follows if the property is acquired by a local authority, railway company, etc., under compulsory powers.

(4) *Trust for sale.*—Real property subject to a trust for sale (without a further trust for reinvestment in real property) is taxable as personalty, and when a sale takes place Succession Duty is a charge on the proceeds, not on the property sold (S. D. A. 1853, ss. 29 and 42). As in the case of a power of sale, the trust, if it is an express one, must be created by the instrument conferring the succession or some prior instrument. Property can presumably be sold free from the charge of duty under a statutory trust for sale even if the Act creating the trust is passed after the succession has been conferred. As in case (3), the purchaser is protected both from unpaid duty on a past death and also prospective duty on a future death.

(5) *Limitation of time.*—In favour of a purchaser for valuable consideration or a mortgagee, real property or any interest therein ceases to be charged with Succession Duty after the expiration of any of the following periods (Customs and Inland Revenue Act, 1889, s. 12)—

(*a*) Six years from the date of notice to the Commissioners that the succession has fallen into possession. Section 15 of the Act of 1889

requires the notice to be given in a prescribed form. This form ("Entg. No. 23" in England, and "S" in Scotland) is delivered in duplicate, and a receipted copy is returned to the sender to serve as evidence.

(*b*) Six years from the first payment of any instalment of duty if the option conferred by the Customs and Inland Revenue Act, 1888, s. 22, has not been exercised, or

(*c*) Two years from the time for payment of the last instalment of duty if such option has been exercised. Periods (*b*) and (*c*) appear to be applicable only to duty payable by way of life interest, not to duty payable on the principal value under the F. A. 1894, s. 18. In any event they are of little practical importance.

(*d*) Twelve years from the happening of the event which gave rise to the immediate claim for duty.

Marriage settlement trustees are purchasers for this purpose (*re Donelan's Estate*, [1902] 1 I. R. 109). Purchasers also share with other persons the benefit of the periods of limitation previously noted (p. 496).

(6) *Registered land—death before* 1926.

(7) *Registered land—death after* 1925.

(8) *Non-registered land in England and Wales—death after* 1925.

(9) *Assent by a personal representative under the A. E. A.* 1925.

The saving provisions in cases (6)–(9) have already been set out in connection with Estate Duty (pp. 198–200, Nos. 5–8). Difficulty occurs only in the case of non-registered land, where the purchaser must rely on the L. P. A. 1925, s. 17 (1), and L. C. A. 1925, s. 13 (2). He is protected only if the charge *attached*, or was *created*, or *arises*, after 1925. Now a succession *arises*

(except for the special purposes mentioned in the F. A. 1925, s. 24) and Succession Duty is *imposed* and *charged* at the time of the successor's entitlement, *i.e.*, upon the execution of the deed or the death of the testator or intestate. *Primâ facie*, therefore, a purchaser is still concerned with Succession Duty under pre-1926 settlements and wills and intestacies, whenever the death may occur. In the majority of cases title will be made under the S. L. A. 1925 or under a trust for sale, and the charge will be effectually over-reached. But suppose that non-registered land in England was settled by deed or will in 1915 on *A* for life with remainder to *B*. *A* and *B* sold the property in 1920 to *C*. *C* now proposes to sell the fee simple as beneficial owner. *A* is living. Alternatively *A* or *B* has acquired the other's interest and proposes to sell in the same manner (the trustees of the settlement having been discharged). Whatever may have been the intention of the L. C. A. 1925, the Succession Duty prospectively payable on *A's* death seems in strictness to be a charge against the present purchaser. In the case of registered land, there is full protection from duties payable on all deaths after 1925, whenever the charge may have arisen.

As to the *exemption* from Succession Duty where the benefit on the death arises by purchase, *see* p. 412, and as to the limitation of the amount of the duty, where a reversion was purchased before the F. A. 1894 or F. A. 1910, *see* pp. 448 and 455.

Incidence of Succession Duty.

The final incidence of Succession Duty, in the absence of any contrary direction, is fixed by the *charge* of the duty on the successor's interest. Duty in respect of a life interest is therefore payable out of the life tenant's income, and not out of capital, and duty in respect of a

portion or appointed sum out of such sum, not out of the residue of the settled property. But duty levied on the *corpus* of personal property, when it is settled on persons who are all chargeable at the same rate, is payable out of such *corpus*. The life tenant bears his share of the burden in the form of reduced income: there is no provision for apportioning the duty so as to make him pay the amount which would have been payable in respect of his interest if it had been taxed separately. As to purchasers, *see* pp. 502–504.

The following are examples of cases where a succession has been held to be "free of duty":—

(1) A jointure appointed "free from all deductions" (*re Egmont's Settled Estates, Lefroy* v. *Egmont*, [1912] 1 Ch. 251). The Succession Duty in respect of the jointure was ordered to be paid out of capital moneys. But where the deceased had covenanted with the trustees of his daughter's marriage settlement to pay during his life or within twelve months after his death, a sum of £10,000 "free from all deductions whatsoever," which sum was paid by his executor, the trustees were not entitled to recover from the executor the amount of the Succession Duty which they were obliged to pay in connection with the covenantor's death (*re Higgins, Day* v. *Turnell* (1885), 31 Ch. D. 142).

(2) A devise of real property "free of any incumbrances" (*re Nesfield, Barber* v. *Cooper* (1914), 110 L. T. 970, p. 223, *supra*).

(3) An appointment by deed of so much of a settled fund as should be "sufficient to raise the net sum of £2,000" (*re Saunders, Saunders* v. *Gore*, [1898] 1 Ch. 17).

(4) A gift by will of "such an annual sum of money" as would, together with the income of funds

held under a marriage settlement, produce "a clear annual income of £1,500," with a further direction that no deduction should be made from any legacy "for the legacy tax, or any other matter, cause or thing" (*Peareth* v. *Marriott* (1861), 22 Ch. D. 182). The beneficiary was entitled to the £1,500 per annum not only free of duties under the will but also free of Succession Duty under the settlement, which duty was accordingly payable by the trustees of the will.

A general direction in a will to pay "all death duties" is regarded *primâ facie* as referring only to duties payable under the dispositions contained in the will: it has been held not to cover the Succession Duty in respect of a sum payable out of the testator's real estate, under a covenant by him, to the trustees of his daughter's marriage settlement (*re Briggs, Richardson* v. *Bantoft*, [1914] 2 Ch. 413). But a direction to pay out of a specified fund "the Legacy and Succession Duty payable . . . in consequence of (the testator's) death" includes Succession Duty on property of which the testator was tenant for life (*Poulett* v. *Hood* (1866), 35 Beav. 234, 241). Succession Duty payable "upon" the testator's death has been held to include duty in respect of the proceeds of timber, subsequently sold and taxable with reference to the death (*re Leconfield, Wyndham* v. *Leconfield* (1904), 90 L. T. 399).

A provision that all "legacies" or "legacies and bequests" shall be free of Legacy Duty, or even "free of duty" simply, does not apply to real or leasehold property devised by the will (*White* v. *Lake* (1868), L. R. 6 Eq. 188; *re Johnston, Cockerell* v. *Essex* (1884), 26 Ch. D. 538). But where annuities charged on real estate were bequeathed "without any deductions except for *Legacy* Duty and Income Tax," it was held that the case

was one of *falsa demonstratio* and that the annuitants must bear the *Succession* Duty (*re Rayer, Rayer* v. *Rayer,* [1903] 1 Ch. 685).

Further guidance may be found among the similar cases bearing on Estate Duty and Legacy Duty (pp. 220–227 and 351–355).

CHAPTER XIV.

EXEMPTIONS FROM SUCCESSION DUTY.

(1) Property to which Members of the Royal Family succeed.

(2) Where the whole succession derived from the same predecessor is under £100 in value.

(3) Free estate not exceeding £1,000.

(4) Free estate slightly exceeding £1,000: limitation of amount of Succession Duty.

(5) Property which is liable to Legacy Duty.

(6) Settled chattels, until they come into the hands of a person competent to dispose of them.

(7) Books, prints, pictures, and articles of artistic or other special interest to which a body corporate succeeds.

(8) Similar articles given for national purposes.

(9) Similar articles, certified by the Treasury to be of national interest, until sold, or when sold to certain public bodies.

(10) Advowsons and Church patronage, until sold.

(11) Timber, until sold.

(12) Life insurance policies as between the company and the beneficiaries.

(13) Transactions made *bona fide* for valuable consideration in money or money's worth.

(14) Property taken by a successor under his own disposition.

(15) Money left to pay Succession Duty.

(16) "Killed in War": conditional remission; and other military and naval exemptions.

(17) Successions taken by virtue of foreign law.
(18) War Securities held by foreigners.
(19) Exemptions from the 1 per cent. rate only—£15,000 limit, etc.

1. A succession to which any member of the British Royal Family becomes beneficially entitled is exempt from Succession Duty, and no account need be rendered (S. D. A. 1853, s. 18, incorporating Legacy Duty exemptions).

2. Where the property liable to Succession Duty, passing on any death, derived from the same predecessor is under £100, Succession Duty is not payable (S. D. A. 1853, s. 18).

Thus, if under the will of *A*, *B* becomes entitled to real estate worth £80, and there is no other property chargeable with Succession Duty, *B* escapes without payment of Succession Duty, even though he may take a share of *A's* personal estate which is worth considerably more than £100.

But if another successor, *C*, takes other real estate worth £70 under the same will, both successions are liable to Succession Duty, as the whole successions are then over £100 in value.

If, however, the property devised to *B* were first given to *A's* widow for life, and no other succession derived from *A* arose on her death, then *B's* property would escape duty on that occasion, because the whole succession on the widow's death derived from *A* would be under £100 in value.

Again, if *B* derived his succession on the death of *A* from one predecessor, and *C*, on the same death, from another predecessor, both would escape duty, and the result would be the same if *B* succeeded to both successions.

Successions which are exempt on some other ground must nevertheless be taken into account in determining

whether the £100 limit is exceeded. For example, if the net estate consists of a farm worth £3,000, devised to a son, and a cottage worth £80, devised to a brother, the brother pays Succession Duty, notwithstanding that the son's succession is exempt on the ground that the estate does not exceed £15,000.

Formerly, where the taxable value of the succession was under £20 in value, Succession Duty was not payable (S. D. A. 1853, s. 18). Thus, if *A*, aged ninety, became entitled for life to property worth £7 per annum the taxable value according to the tables in the Act would be £19 1s. 3d., and *A* would have escaped duty. This exemption, however, was abolished by the Customs and Inland Revenue Act, 1889, s. 10 (2).

3. Where the value for Estate Duty, exclusive of property settled otherwise than by the will of the deceased, does not exceed £1,000, no Succession Duty is payable under the will or intestacy of the deceased (F. A. 1894, s. 16 (3)). Thus, suppose *A* has property of his own worth £600 and there were gifts *inter vivos* (not settled) worth £200, no Succession Duty is payable, as the whole together is under £1,000. But settled property is not exempt from Succession Duty under this provision, even if all the property passing on the death, including the settled property, is under £1,000. Although property settled otherwise than by the will is expressly excluded, the fact that the deceased settled his free estate by his will does not, of course, prevent the exemption from applying to such estate. As to what properties make up the estate not exceeding £1,000, *see* pp. 125–128.

4. The provision of the F. A. 1914, s. 13 (2), for reduction of the amount of Legacy and Succession Duty where the net free estate exceeds £1,000 is explained on p. 382. It applies where the total amount of Legacy Duty and Succession Duty is greater than the amount by which the net estate exceeds £1,000, but it does not apply to

property settled otherwise than by the will of the deceased. Where there are several successors, and different rates of duty are involved, an apportionment of the abated duty between the successors will be necessary. (*See* as to the mode of assessment, p. 404.)

In connection with this provision the abatement of Estate Duty where the excess over a "step" in the sale of rates is small should be noted (F. A. 1914, s. 13 (1), pp. 117–119). Where the estate exceeds £1,000 but does not exceed £1,010 6s. 3d. relief may be obtained under both sub-sections.

5. Property which is liable to Legacy Duty is not also chargeable with Succession Duty in respect of the same acquisition of the same property (S. D. A. 1853, s. 18). For example, *A* by deed gives a fund to *B* for life, and then to *C*, and *C* dies before *B*, leaving his reversion to *D*. On the death of *B*, Legacy Duty is payable on the property under *C's* will and this duty displaces the Succession Duty which would otherwise have been payable under the deed (*A.-G.* v. *Littledale* (1871), L. R. 5 E. & I. App. 290). An actual payment of Legacy Duty is necessary to secure the exemption. If *C* in the example died domiciled abroad, or his estate did not exceed £1,000 in value, so that no Legacy Duty was actually leviable, there would be no relief on this ground from the Succession Duty.

The effect of the exemption has been separately noted in connection with appointments under general powers (pp. 426–428) and transmitted successions (pp. 474–475).

6. Plate, furniture, or other things not yielding income and settled upon persons in succession are not liable to duty while enjoyed in kind by a person not having power to dispose (S. D. A. 1853, s. 32, incorporating L. D. A. 1796, s. 14). Thus, where *A* by deed settles such property on himself for life and then on *B* for life and on his death on *C* absolutely, Succession

Duty is not payable by *B* on the death of *A*. On *B's* death, however, Succession Duty would become payable (*see also* Nos. 7, 8 and 9, and corresponding exemption from Legacy Duty, pp. 382–383).

7. Books, prints, pictures, statues, gems, coins, medals, specimens of natural history, or other specific articles to which a body corporate succeeds for preservation and not for sale are exempt from Succession Duty (S. D. A. 1853, s. 18, incorporating exemptions in Schedule to the Stamp Act, 1815. There is a corresponding exemption from Legacy Duty (p. 383).

8. The Treasury is authorised to remit the duty in respect of any such pictures, prints, books, manuscripts, works of art or scientific collections, as appear to the Treasury to be of national, scientific or historic interest, and to be given or bequeathed for national purposes, or to any university, county council or municipal corporation (F. A. 1894, s. 15 (2); pp. 263–264, *supra*).

9. Pictures, prints, books, manuscripts, works of art, scientific collections, or other things not yielding income, which appear to the Treasury to be of national, scientific, historic or artistic interest are not chargeable with Succession Duty while enjoyed in kind, whether settled or not; but, should they at any time be sold, Succession Duty is payable on the proceeds of sale, and the person selling or for whose benefit the objects are sold is accountable (F. A. 1930, s. 40; replacing, as regards deaths on or after 1st August, 1930, F. A. 1896, s. 20, as applied by F. A. 1910, s. 63, and extended by F. A. 1921, s. 44; replacing also, as regards chattels within this exemption, S. D. A. 1853, s. 32, incorporating L. D. A. 1796, s. 14). The duty is levied with reference to the last death on which the objects passed, but interest on the duty is chargeable only from the date of sale. An account is to be delivered within one month after the sale. Costs of sale may be deducted, as well as

the Estate Duty. An absolute exemption from duty is given if the sale is to certain public bodies. *See also* pp. 264–266, where the provisions are more fully discussed in connection with the corresponding exemption from Estate Duty.

10. In the case of an advowson or Church patronage, no Succession Duty is payable unless and until a sale takes place, in which case Succession Duty is payable on the proceeds of sale (S. D. A. 1853, s. 24). As it has been decided that such proceeds are not liable to Estate Duty (*A.-G.* v. *Peek,* [1913] 2 K. B. 487), the higher rates of Succession Duty are payable (*see* pp. 448–451). If, however, the advowson were settled and the life tenant died after the sale, Estate Duty would be payable in connection with *his* death. This liability would arise quite apart from the F. A. 1914, s. 14, and would not therefore be affected by the fact that the life tenant was the spouse of the settlor.

11. Where a succession comprises land on which timber, trees or wood are growing, Succession Duty is not payable in respect of such timber, trees or wood unless and until sold (F. A. 1910, 2nd and 3rd paragraphs of s. 61 (5); F. A. 1912, s. 9; pp. 456–457 and 461–462, *supra*).

12. In the case of life insurance policies, it is expressly provided that the relation of predecessor and successor is not created between the insurers and the insured, or between the insurers and any assignee of the insured; but any disposition or devolution of the moneys payable under such policy may create a succession liable to duty (S. D. A. 1853, s. 17). *See,* as to Succession Duty on policy moneys, pp. 420–421.

13. A similar exemption as between the contracting parties is given in the case of bonds or contracts made by any person *bonâ fide* for valuable consideration in money or money's worth for the payment of money or

money's worth after the death of any other person; but, again, any disposition or devolution of the money may create a succession liable to duty (S. D. A. 1853, s. 17).

Apart from the last two express exemptions, it has been held that a conveyance or assignment by way of *bonâ fide* sale for consideration in money or money's worth is not a disposition within the meaning of the S. D. A. 1853, s. 2 (*Fryer* v. *Morland* (1876), 3 Ch. D. 675).

The subject is dealt with above, under the headings *Gratuitous Acquisition* and *Gifts with Reservation* (pp. 412–413 and 431–433).

14. Where a successor becomes entitled on a death under a disposition made by himself, Succession Duty is not payable provided the property was in possession at the time the disposition was made. In similar conditions Succession Duty is not chargeable on the termination of any charge, estate or interest created by the successor (S. D. A. 1853, s. 12; pp. 471–472, *supra*).

15. Money which is left to pay Succession Duty is not itself liable to Succession Duty, and, therefore, where a devise is directed to be free of Succession Duty (*see* pp. 508–510), no Succession Duty is payable on the money applied in payment of Succession Duty on the devise (S. D. A. 1853, s. 18). Such sums may, however, be liable to Legacy Duty (*see* p. 354).

16. As regards "killed in war" cases and other exemptions connected with military and naval service, the statements as to Legacy Duty in Chapter IX (No. 11) apply equally to Succession Duty.

17. Succession Duty is payable only by persons who take their benefits by virtue of British law. Immoveable property outside Great Britain, devolving on death as such, and moveable property (even if situate in Great Britain) devolving under a non-British disposition or title, are not chargeable. On the other hand, duty is

payable in respect of immoveable property in Great Britain, whatever may be the domicile of the parties, and also in respect of moveable property, wherever situate, devolving under a British disposition or title. (*See* pp. 433–441.)

18. As noted on pp. 236–237, the Treasury was empowered to issue war securities free from taxation, and the securities so issued are not chargeable with Succession Duty so long as they are in the beneficial ownership of a person who was neither domiciled nor ordinarily resident in Great Britain or Northern Ireland. When they pass on the death of a tenant for life, *his* domicile and residence, not that of the remainderman, is the governing factor.

19. Prior to the F. A. 1910, no Succession Duty was payable in any circumstances by the husband or wife of the predecessor, no rate being prescribed. The duty is now payable by the husband or wife only where the devolution occurs, or the first succession under the disposition arose, on or after the 30th April, 1909, and the £15,000 and £1,000 or £2,000 limits are exceeded.

Subject to the F. A. 1910, lineal issue and lineal ancestors (and their husbands and wives) are exempt from Succession Duty where—(1) Probate Duty, Inventory Duty or Account Duty has been paid on the property (Customs and Inland Revenue Act, 1881, s. 41), or (2) Estate Duty has been paid or is chargeable on the property (F. A. 1894, ss. 1 and 5 (2)).

The payment of Estate Duty, Probate Duty, etc., need not be made in connection with the death which gives rise to the *primâ facie* claim for Succession Duty: it may have been made in connection with any earlier death during the currency of the settlement. For example, personal property was settled by a marriage settlement of 1855 on the spouses and the survivor of them, with

remainder in the events to the only child. The wife died in 1876 and the child in 1881. Probate Duty was paid on the child's estate on his reversion. *Held*, that this payment exempted the property from Succession Duty at 1 per cent. on the death of the father (*re Haygarth's Trusts* (1883), 22 Ch. D. 545). Similarly, a payment of Estate Duty or Probate Duty under the original title exempts the property from Succession Duty at 1 per cent. under a subsidiary disposition by a reversioner. The exemption stands on the same footing in these respects as the exemptions from Estate Duty on the death of a life tenant (p. 243), except that for the present purpose it makes no difference whether the two deceased persons were spouses or not, or, where the Estate Duty or Probate Duty was paid on a reversioner's death, whether he was the settlor or not.

The principal cases in which Estate Duty is theoretically *chargeable*, though not *paid*, are the estate of a common seaman, soldier, etc., killed or dying on service (p. 256), and a survivorship annuity not exceeding £25 (p. 263). These are considered to be liable to Succession Duty at 1 per cent. only where they are taxable under the F. A. 1910.

The 1 per cent. duty, having been more or less in abeyance from 1894 to 1909 (by reason of the normal payment of Estate Duty), was in effect re-imposed on issue and ancestors, and at the same time extended to spouses, by the F. A. 1910, s. 58 (2). But the duty is payable under this provision only where—

(1) In the case of a succession arising through devolution by law, the succession arises on or after the 30th April, 1909, or in the case of a succession arising under a disposition, the *first succession* under the disposition arises on or after that date (F. A. 1910, s. 58 (4); pp. 443–448, *supra*), *and*

(2) The property passing on the death of *the deceased*, in respect of which Estate Duty is payable, exceeds £15,000 (s. 58 (2) (*a*) and (3)), *and*

(3) The total individual benefit to the legatee or successor exceeds £1,000, or, in the case of the widow or infant child of the testator, intestate or predecessor, £2,000 (s. 58 (2) (*b*) and (*c*)).

All three conditions must be satisfied before s. 58 (2) can apply. But the conditions involve no *fresh* exemption from Succession Duty or Legacy Duty. Duty which would have been payable apart from the 1910 Act (that is, in effect, the successions of issue and ancestors where the property has escaped Estate Duty) is still leviable notwithstanding that the property which *is* liable to Estate Duty on the death is under £15,000 and the individual benefit is under £1,000.

Moreover the rate in such cases will usually be 1½ per cent. (Customs and Inland Revenue Act, 1888, s. 21 (1); pp. 448–451, *supra*.)

Spouses, on the other hand, are still taxable, even in respect of property which has *itself* escaped Estate Duty, only where the conditions are fulfilled.

The £15,000 *Limit.*

It is provided by the F. A. 1910, s. 58 (2) (*a*), that the 1 per cent. Legacy Duty and Succession Duty are not to be levied under that Act where the principal value of the property passing on the death of *the deceased* in respect of which Estate Duty is payable (other than property in which the deceased never had an interest, and property of which the deceased never was competent to dispose and which on his death passes to persons other than the husband or wife or a lineal ancestor or descendant of the deceased) does not exceed £15,000, whatever may be the value of the particular legacy or succession. *The*

deceased is defined by s. 58 (3) as meaning, in the case of a legacy or residue, the testator (including a person making a donation *mortis causâ*) or intestate, and, in the case of a succession arising through devolution by law, the person on whose death the succession arises, and, in the case of a succession arising under a disposition, the person on whose death the first succession thereunder arises.

The deceased, therefore, is the same person, the date of whose death determines whether the F. A. 1910 is applicable. As regards legacies the position is straightforward: as to the arising of successions, *see* pp. 443–448. The primary point to be borne in mind is that *the deceased* is not necessarily the person whose death has given rise to the immediate *primâ facie* claim for duty.

For the purpose of determining whether the £15,000 limit is exceeded on the death of *X*, the following items are not taken into account:—

A. Property on which Estate Duty is not payable on *X's* death: for instance, immoveable property situate abroad, or the property of a common seaman or soldier, killed or dying on service.

B. Property in which *X* never had an interest: as to the full meaning of this, *see* pp. 123–125.

C. Property of which *X* never was competent to dispose and which passes on *X's* death to persons other than *X's* husband, wife, ancestor or descendant. As to the meaning of "competent to dispose," *see* pp. 8–13.

D. Personal property settled by the wills of persons other than *X*. In this case *X* is not *the deceased* for the purposes of s. 58. As far as the £15,000 limit on *X's* death is concerned, it makes no difference whether the other testators died

before or after 1909. There is one exception from this category: where the other testator died domiciled abroad, creating by his will a British settlement, *the deceased* is not the testator but the person whose death gives rise to the first succession after the British settlement has become effective; and that person *may* be *X*.

E. Settled property, not falling in category D, where the first succession under the disposition arose on some death previous to the death of *X*. Here again *X* is not *the deceased,* and again, as far as the £15,000 limit on *X's* death is concerned, it makes no difference whether the first succession arose before or after 1909.

F. Timber: this is considered to be excluded from the £15,000 by the F. A. 1912, s. 9, even if in the event it is sold and Estate Duty becomes payable on the proceeds.

G. An accretion to *X's* estate under the Wills Act, 1837, s. 33: such an accretion had no value at the date of *X's* death (*see* p. 475).

On the other hand, "property passing" includes property which is deemed to pass. Also, in spite of some resemblances in the rules, the £15,000 limit is independent of the question of aggregation for Estate Duty, so that the non-settled property, even where it does not exceed £1,000 and is therefore an "estate by itself," must still be taken into account for the present purpose.

In the case of interests in expectancy, forming part of *X's* free estate, the *reversionary value* only need be taken into account, even if Estate Duty is postponed and ultimately paid on the value in possession. Reversionary interests in real property as well as in personal property fall to be included. The £15,000 test on *X's* death will then govern his real and personal property in possession and also his reversionary personal property.

But to determine whether the reversionary real property is itself chargeable with Succession Duty under *X's* will or intestacy, it is necessary to apply the £15,000 test on the death when such property falls into possession. The succession under *X's* will or intestacy does not *arise* until then.

It is not necessary that the property to be included shall itself be liable to Legacy Duty or Succession Duty. The "estate by itself," mentioned above, and absolute gifts within three years of death, may be instanced. Conversely, the property which is excluded from the £15,000 may itself be chargeable with the 1 per cent. duty. This can most easily be explained by illustration. Suppose the property passing on the death of *X* is as follows:—

	£
(1) *X's* free estate given equally to his wife and child	5,000
(2) Absolute gift by *X* within three years of his death	1,000
(3) Half share of house purchased by *X* and his wife as joint tenants	1,500
(4) Annuity of £20 purchased by *X* for the joint lives of himself and his wife and the life of the survivor: value for the wife's life at age 58	205
(5) Policy on *X's* life effected and kept up by him for the benefit of his wife, her executors, administrators and assigns	2,000
(6) Property settled by deed by *X's* uncle on *X* for life, with remainder to the uncle's son	5,000
(7) Legacy bequeathed by *X's* mother to *X* for life and then to his child	6,000
Carried forward ...	£20,705

	£
Brought forward ...	20,705
(8) Property settled by deed by *X's* grandfather on *X's* father for life, then on *X* (who survived his father) for life, with remainder to *X's* child	10,000
(9) Property settled by deed by *X's* father on *X* for life, then on his wife for life, with remainder to *X's* child	8,000
Total	£38,705

Item (4) falls within exception A (*see* p. 263), item (5) within exception B, item (6) within exception C, item (7) within exception D, and item (8) within exception E. Items (1), (2), (3) and (9) have alone to be taken into account, but their value is £15,500, so the limit is exceeded. In consequence, not only is Legacy Duty or Succession Duty payable in respect of items (1), (3) and (9), but also Succession Duty is payable in respect of items (4), (5) and (6). Item (2) is outside the scope of Legacy Duty or Succession Duty. If *X's* free estate had been £4,000 instead of £5,000, items (1), (3), (4), (5), (6) and (9) would all have escaped Legacy Duty and Succession Duty.

The question, whether items (7) and (8) are taxable, is not affected by the present calculation. The test for item (7) is whether the *mother* died on or after 30th April, 1909, and whether the £15,000 limit was exceeded on *her* death. If so, Legacy Duty is now payable by *X's* child. The test for item (8) is whether *X's* father, whose death gave rise to the first succession, died on or after the 30th April, 1909, and whether the £15,000 limit was exceeded on *his* death. If so, Succession Duty is payable by *X's* child.

Subject to the £1,000 and £2,000 limits of individual benefit, and assuming that *the deceased* dies on or after

the 30th April, 1909, the question, whether all the legacies and successions under a particular will or disposition are dutiable, is settled once for all by the £15,000 test on the death of *the deceased*. Items (7) and (8), as indicated, are governed by the deaths of the mother and father respectively. So also if the £15,000 limit is exceeded on *X's* death, his child will pay Succession Duty, on the death of *X's* wife, in respect of item (9), even if the property passing on the wife's death is under £15,000. Conversely, if the limit is *not* exceeded on *X's* death, the child will *not* be liable to Succession Duty on the wife's death, even if the property then passing exceeds £15,000.

There is no "margin relief" as regards the £15,000 limit. If the value of the property for Estate Duty is £15,001, and the value shown in the residuary account, say, £14,300—the sole beneficiary being the widow or child—the Legacy Duty and/or Succession Duty will amount to £143.

The £1,000 *and* £2,000 *Limits.*

Even where *the deceased* died on or after the 30th April, 1909, and the £15,000 limit was exceeded on his death, a legatee or successor may still be exempted if his *individual* benefit is within prescribed limits. It is provided by the F. A. 1910, s. 58 (2) (*b*) and (*c*), that the 1 per cent. Legacy Duty and Succession Duty are not to be levied under that Act where the amount or value of the particular legacy or succession, together with any other legacies or successions derived by the same person from the same testator, intestate or predecessor, does not exceed £1,000, or, where the beneficiary is the widow or a child under the age of twenty-one years of the testator, intestate or predecessor, £2,000—whatever may be the principal value of the property.

The test of exemption is whether the aggregate value of all benefits taken by the same beneficiary and derived from one and the same person, whether as a legacy or a succession, or both, and whether in possession or reversion, exceeds £1,000, or £2,000 in the case of a widow or infant child. The value of such benefit is the value for duty under the L. D. and S. D. Acts. In the case of a legacy the value should be ascertained at the date of payment or retainer. Interest (if any) payable by law to the legatee, in respect of the period between the date of death and date of payment or retainer, need not be taken into account, as it is not considered to be a gift by the will; but any interest payable under the terms of the will, to which the legatee would not otherwise be entitled, and any other accretions, should be included. Benefits taxable by way of annuity should be valued according to the Tables in the S. D. A. 1853. In the case of a succession the value should be ascertained at the time when the successor or any persons in his right become entitled in possession or to the receipt of the rents and profits. Thus where the successor takes absolutely, the value is ascertained after deducting Estate Duty and costs of raising the same, and where he takes for life or for a limited period, the value of his interest as calculated for payment of Succession Duty should be brought into account.

The value of the benefit for this purpose would, however, only include such legacies and successions as are subject to British duty. The following are not taken into account:—

(*a*) A legacy under the will of a testator domiciled abroad (unless it is payable out of his immoveable property in this country or after a British trust created by the will has become operative, in either of which cases it is within the charge of Succession Duty).

(*b*) A benefit taken under a settlement for which the *forum* of administration is non-British.

(*c*) The value of a life interest in articles of furniture, etc., as such interest is not chargeable with duty.

(*d*) The estate up to £5,000 on which duty is remitted in the case of members of His Majesty's combatant forces killed in the Great War or subsequently.

The question of the foreign testator or foreign settlement arises where the same person also owned immoveable property in this country or was also predecessor under a British settlement. For example, a testator dies domiciled in Northern Ireland, owning, in addition to property outside Great Britain, a house in England worth £2,500 and British personalty worth £13,000. Both items are taken into account for the £15,000 limit, which is exceeded. If the house is devised to one son, the son is chargeable with Succession Duty, but if the whole estate goes to three children equally, Succession Duty is not payable. The personalty, being outside the scope of the British Legacy Duty, is not regarded as the subject of "legacies," so that the only individual benefits, within the contemplation of s. 58 (2), are the shares of the house, worth under £1,000 each.

There is nothing in s. 58 (2) (*b*) or (*c*) to require that the "other legacies or successions" shall themselves be taxable. It is sufficient that they are within the charge of duty, even if they happen to be covered by some express exemption. The practice of excluding items (*c*) and (*d*)—on the basis that they are *outside the charge* as opposed to being *exempted*—appears to be a matter of concession. The concession is not extended to legacies and successions, which are exempt on other grounds. For instance, if the beneficiary takes a legacy of £500 under the will of his grandfather, who dies after

1909, and also £600 under a disposition by the grandfather, under which disposition the first succession arose before 1909, Legacy Duty is duly claimed on the £500.

Where a person takes an immediate benefit under £1,000 in value plus a vested reversionary interest in other property derived from the same disponer, and the present value of the whole exceeds £1,000, duty is payable at once on the immediate benefit. The duty on the reversion may also be paid or may be postponed until the reversion falls into possession. But if the present value of the whole does not exceed £1,000, then duty is not immediately payable and interest is not chargeable until the benefit has amounted to £1,000. If the reversion is contingent (for instance, where it is conditional upon the beneficiary attaining twenty-one or where it is subject to a power of appointment), it should be ignored unless and until it falls into possession. Then, if its value and the value of the immediate benefit are found to exceed £1,000, duty on the whole becomes payable. If, in a case where duty is not immediately payable, it is desired to pay duty at once on the benefit in possession, it is accepted under discount and on the understanding that a refund (without interest) may be claimed if the duty should not, in the event, become due.

In the case of personalty settled upon persons all liable to the same rate, if it can be postulated for certain that the value of the legacy or succession taken by each person in the series is of taxable amount, the 1 per cent. duty is payable at once on the capital; otherwise this duty is, in strictness, payable only on each individual benefit as and when it becomes an interest in possession. In such cases, however, in order to save trouble and to dispose of the claim once and for all, it is generally found convenient to compound the duty by payment at once on the capital. As a rule, this arrangement is

regarded as final: if the right to a revision on the life tenant's death is reserved it is open to the Commissioners of Inland Revenue to claim additional duty on that event on any increase in value in the assets then divisible.

The £2,000 value applicable to the widow or an infant child should be ascertained in the same way as the £1,000 value. A minor should be treated as a person taking a legacy or succession if his interest is vested or, if the interest is contingent, provided that he is entitled to interest meantime. If the value is under £2,000, but on attaining twenty-one he receives any other benefit derived from the same person, which, added to the vested interest, makes up in the aggregate an amount which exceeds £2,000, the exemption as to the vested interest will cease and duty will then be leviable on the aggregate benefit. The proviso as to the £2,000 limit does not apply to grandchildren.

There is no "margin relief" as regards the £1,000 and £2,000 limits. If the benefit is £1,005 or £2,005, the duty is £10 1s. or £20 1s.

CHAPTER XV.

SUCCESSION DUTY.—PRACTICE.

Forms in use: No. 1.—For legacies payable out of real estate or leaseholds. Estate Duty may be deducted as the legatee is liable to pay a proportion, unless the legacy is given free of such duty or is payable on the testator's death out of leaseholds given by will. Interest on duty is charged from the death, as the legacy carries interest from that date.

No. 2.—For annuities or rent-charges charged by will on real estate or leaseholds. The date of birth of the annuitant should be shown. Estate Duty may be deducted (unless the annuity is given free therefrom or is payable on the testator's death out of leaseholds given by will) and such deduction may generally be a percentage of the annuity at the same rate as Estate Duty. Thus, suppose the annuity were £50 charged on a freehold farm, on which Estate Duty had been paid at 4 per cent. The deduction against the annuity would be 4 per cent. on £50 = £2; and therefore the annuity would be reduced to £48. The duty may be paid either by four equal yearly instalments, the first of which is due at the end of a year from death, or in full under discount. If the annuitant dies before all the instalments have been paid, those not due cease to be payable, and if the duty was paid in full under discount, application should be made on *Form* H (England) or T (Scotland), accompanied by the stamped account, for a return of duty equivalent to the instalments which would not have become due before the annuitant's death.

Where the annuity or rent-charge was created by deed, *Form* 5 or 6 should be used.

No. 4 in duplicate.—For personal property (not including leaseholds) under a settlement where duty is chargeable on the capital. This form is used where the successors become absolutely entitled, or where the property is taken by different persons in succession, who are all liable to the same rate of duty. The property is accounted for at its value at the date of the death giving rise to the claim, *i.e.*, the same value as for Estate Duty, and the Estate Duty may be deducted as may also brokerage and other costs of division and distribution actually, legally and necessarily incurred by the trustees. The duty is payable in full and cannot be paid by instalments. Interest on the duty is chargeable from the death.

No. 5 in duplicate.—For personal property (not including leaseholds) where the duty is chargeable by way of annuity. A percentage of the income at the Estate Duty rate may be deducted in respect of Estate Duty as in the case of a No. 2 account. The account should show the annual income of the property without deduction for Income Tax, and any uninvested capital and securities having a value, but not at the moment producing income, should be accounted for at, say, $4\frac{3}{4}$ per cent. as representing the annual income of such items. The duty is payable in the same way as already detailed in the case of *Form* 2 (*see* pp. 458–459 and 464–465).

No. 6 in duplicate.—For real and leasehold property, whether the successor takes for life only or for less than an absolute interest, including cases where the duty is payable on the cesser of leases or the cesser of dower or terce.

The account should show the gross rental of the property, or, if not let or if occupied by the owner, the gross assessment to property tax, or, if not assessed to

property tax, the gross assessment to poor rate. Deduction may be taken for any ground or chief rent, land tax, tithe rent-charge, drainage rent-charge, or other annual charges on the property, including rates and repairs if borne by the owner. The deduction for repairs should be the average sum required to keep the property in order, but not including the cost of structural alterations or improvements. An average deduction would be $7\frac{1}{2}$ per cent. to 10 per cent. of the gross rental for agricultural property, 20 per cent. for cottage and tenement property, and 15 per cent. for house property. If the property is let on a repairing lease so that the repairs are done by the tenant, no deduction for repairs should, of course, be taken. Income or property tax may not be deducted, nor expenses of management, nor, where the account is based on the gross assessment to property tax, may tithe rent-charge, if the latter is separately assessed, and therefore allowed for in the assessment of the property.

If the property is subject to an annuity or terminable charge, deduction should be taken against the annual value, but a supplemental account for further duty will be required when the annuity or charge terminates. Interest at $4\frac{3}{4}$ per cent. on the amount of the Estate Duty may be deducted, except in the case of leasehold property under a will, in which case no deduction in respect of Estate Duty may be made (unless it is a further Estate Duty payable in consequence of the F. A. 1914, s. 14). Deduction may also be taken, (1) for $4\frac{3}{4}$ per cent. on sums (if any) spent by the successor, before becoming entitled in possession, in structural repairs or permanent improvements, (2) for the annual sum payable for interest on mortgages on the *corpus* of the property, (3) in respect of any fines, manorial payments or compensation due in respect of copyhold

property, now enfranchised (as noted on p. 460), and (4) in the case of licensed property, in respect of the compensation charge for the year in which the time for delivery of the account occurs, the deduction being an annual sum representing the proportion which the tenant might deduct from that year's rent.

In the case of leases at ground rents, the time for payment of the further duty arrives when the lease expires or when it is surrendered, and in the latter case the account should be based on the increased rent or fine or other consideration payable in connection with the fresh lease, without any allowance for the period to elapse between the date of such fresh lease and the normal date of expiration of the old lease. When the lease expires normally, any sum received for dilapidations should be brought into account in fixing the allowance for repairs. If the successor purchases the unexpired term, allowance in respect of the sum so paid should be claimed. If the site has been built on by the successor, the account should be based on the new annual value, from which the old ground rent and an allowance for the sums spent in rebuilding may be deducted. Allowances in respect of all capital sums, fines or premiums may be taken at $4\frac{3}{4}$ per cent. interest, that being the present average rate of interest on trust securities.

The account should show the exact date of birth of the successor. The duty may be paid by instalments, as explained on pp. 462–463, the first being due one year after the death. If paid in full, discount is allowed for a period of three years and three months, less the time which has already elapsed between the date of the death and the delivery of the account. If the successor dies before all the instalments are paid, the half-yearly instalments which have not become due cease to be payable, and if the duty was paid in advance, application should

be made on *Form* H (England) or T (Scotland), duly sworn, and accompanied by the stamped receipt, for a return of a proportionate amount of the duty.

No. 6–1 (England) or 6A (Scotland), in duplicate.—For real and leasehold property where the successor takes absolutely, including a share of such property held in joint tenancy and an undivided share.

The account should show the principal value as for Estate Duty and (except in the case of leasehold property under a will) Estate Duty should be deducted as well as expenses (if any) of raising the same. In no case should costs of sale be deducted, whether the sale is effected by the successor or by personal representatives at his request or with his consent under a statutory trust or power to sell. Allowance may be taken for mortgages, and also for terminable annuities as noted on p. 153 in the case of Estate Duty. It may be pointed out that where two or more persons succeed as tenants in common, duty is only chargeable on the value of each succession, *i.e.*, the separate value of each undivided share. In the result, the aggregate values of the separate successions may be less than the value of the entirety of the property.

The duty may be paid at once, in which case, if payment is made within the year, discount up to the end of the year will be allowed; or it may be paid by the same instalments as Estate Duty, the first being due one year after the death. If the property is sold, and also, where the Acts of 1925 apply, where it is exchanged or charged, all instalments become immediately payable (F. A. 1894, s. 6 (8); L. P. A. 1925, s. 17 (3); L. R. A. 1925, s. 73 (6)). If the duty is being paid by instalments and the successor dies before they are all paid, the remaining instalments are still payable, though the subsequent owner may continue to pay by instalments.

There is no provision corresponding to that relating to personal estate by which duty can be taken at once on the *corpus* of real estate and leaseholds, not directed to be sold, which devolve in succession on persons all liable to the same rate of duty.

No. 7.—For the second and subsequent instalments of duty assessed on *Form* 6 by way of life interest.

No. 7–1 (England) or 7A (Scotland).—For the second and subsequent instalments of duty assessed on *Form* 6–1 or 6A on the capital value.

No. 8 in duplicate.—For the proceeds of real and leasehold property *directed to be sold,* and also for real estate under an intestacy, if sold.

The gross proceeds of sale should be included in the account, or if the property has not been sold, the same value as for Estate Duty. Estate Duty (except the Estate Duty payable in respect of leaseholds on the death of the testator), the costs of raising and paying the same and also the costs of sale may be deducted. The account should be used where the successor takes the property absolutely, or where it is given to different people in succession, all of whom are liable to the same rate of duty. The duty is payable in full and cannot be paid by instalments, and interest on the duty is charged from the death, or alternatively and more correctly, rents up to the date of sale or up to the date of the account, if the property is unsold, should be included in the account and in that case interest on the duty is not chargeable.

No. 9 in duplicate.—For the cesser of terminable charges upon real and leasehold property where the duty is payable by way of life interest (not including cessers of leases or cessers of dower or terce, for which No. 6 should be used).

This is mainly used when an annuity or rent-charge on real or leasehold property ceases and the successor takes for life, or where, although the successor takes

absolutely, his original succession took place before the passing of the F. A. 1894, in which case the cesser of the annuity is regarded as part of the original succession and Succession Duty is payable by way of life interest as in the case of the original succession. The duty may be paid by the same instalments as the duty on the property itself, and, if paid in full, discount is allowed for three years and three months, less the time which has elapsed between the death of the annuitant and the delivery of the account. The duty is payable on the life interest of the successor, and his age is taken as at the date of death of the annuitant. Deduction may be taken for $4\frac{3}{4}$ per cent. on the proper proportion of the Estate Duty, except where the whole of the Estate Duty has been allowed for in the original account.

Where the successor was competent to dispose and succeeded after the F. A. 1894, and deduction was taken in the original account for a "slice" of the property sufficient to produce the annuity, duty is payable on the death of the annuitant on the value of such "slice," and may, in the case of real estate and leaseholds, be accounted for on *Form* 6–1 or 6A in duplicate. In the case of personal estate, where the successor takes absolutely, *Form* 4 should be used.

In the case of a gift *inter vivos* of personalty subject to an annuity payable to the donor, Succession Duty is assessed on the cesser of the annuity on its value for a perpetuity, *i.e.*, according to Table III of the S. D. A. 1853, at twenty-four and two-fifths years' purchase, and may be paid by four yearly instalments or in full subject to discount (*Lord Advocate* v. *McKersies* (1881), 19 S. L. R. 438). For instance, *A* in his lifetime gave £500 to *B*, subject to an annuity of £15 to himself for life and on his death to his wife for life. On the death of the wife Succession Duty is payable on the value of £15 per annum at twenty-four and two-fifths years'

purchase, less the proper proportion of the Estate Duty which would have been payable on the death of *A*. The value for Succession Duty may not, however, exceed the value of the fund, less Estate Duty thereon. Thus, if the rate of Estate Duty were 4 per cent. the limit of liability for Succession Duty would be £480. If, therefore, the reservation had been £20 or £25, as the value at twenty-four and two-fifth years' purchase would exceed £480, Succession Duty would in such case be payable on the latter sum only.

If in the above case the annuity had been charged on real estate, Succession Duty would apparently be payable on the value of the annuity for the life of the successor. The benefit accruing by the cesser of the annuity cannot be regarded as a substantive succession to real property within the meaning of the F. A. 1894, s. 18. If, however, the successor were a charity or a corporation, duty would be assessed in such a case on the value of the annuity for a perpetuity (S. D. A. 1853, ss. 16 and 27).

No. 10 in duplicate.—For the proceeds of a sale of timber. It should contain the gross proceeds of sale, with the date of sale and date of receipt of the proceeds. Deduction may be taken for necessary outgoings, as to which *see* p. 147. The duty is assessed on the net proceeds, and interest is charged from the date when the proceeds of sale are received. In strictness, this form is only applicable where the death took place before the F. A. 1910 came into operation, but it may be adapted for use in connection with deaths after that date, or in the alternative *Form No.* 8 or *Form No.* 1 may be used. If the timber unfelled is sold, either with or apart from the land, Succession Duty is payable on the value of the timber as at the date of death without any deduction except for Estate Duty, but an allowance would be made for any Succession Duty already paid on periodical sales.

If the property is settled, and a proportion or the whole of the moneys received in respect of timber becomes capital money so that the tenant for life receives only the income, the Succession Duty thereon should be accounted for on *Form No.* 6 in duplicate, the annual value being taken as $4\frac{3}{4}$ per cent. on the capitalised sum.

No. 19 in duplicate.—For duty payable in expectancy (*see* pp. 469–471). This form is supplied when a commutation is agreed to. Where it is desired to commute, application in writing should be made, setting forth the facts fully, stating how the property and proceeds of sale are to be dealt with, and what are the circumstances which are considered to warrant a commutation. If the property devolves under a will, the full name of the testator, the date of his death, and the date and place of probate should be stated, and if under a deed, the original or a copy should be forwarded for notation.

General.—Where the free estate exceeds £1,000 the amount of Legacy and Succession Duty is limited to the amount of such excess (*see* p. 404). If it is clear that the whole of the excess over £1,000 will be payable for Legacy and Succession Duty, separate accounts are not required, and the duty will be assessed at the amount of the excess on a form prepared in the Estate Duty Office. It will, however, be necessary for the accountable parties to apportion the amount paid between the legatees and successors.

Applications for repayment of Succession Duty should be made by means of *Form* H (England) or T (Scotland), duly sworn to and accompanied by the receipted account. There is no limit of time fixed by statute within which applications for return of Succession Duty (or Legacy Duty) may be made, but no application would be entertained where the assessment was arrived at by agreement with the accounting parties, or where, by reason of lapse of time or for any other cause, the evidence

then procurable was of small or of doubtful value. Where property is given upon trust to sell and divide the proceeds and the duty is accounted for on the Estate Duty values, and afterwards the executors sell *qua* executors, an adjustment of Succession Duty (and Legacy Duty) in accordance with the sale prices could be applied for, assuming there is reasonable belief that there has been no alteration in value between the date of death and the date of sale (*A.-G.* v. *Dardier* (1883), 11 Q. B. D. 16).

Interest on Succession Duty is chargeable at 4 per cent. (F. A. 1919, s. 30) and discount is allowed at the same rate. Interest is only chargeable against the Crown by statute or by express agreement (*re Gosman* (1881), 17 Ch. D. 771), and there is no authority under which interest is allowable on any repayment of Succession Duty, but the interest actually paid on any returnable duty is, of course, repayable.

As to the method of rendering the accounts and paying the duty, including payment by transfer of war securities, and as to the forms of certificate for payment in and payment out of Court, *see* pp. 312–313 and 318–321 on Estate Duty Practice.

All the English forms may be obtained from the Controller, Estate Duty Office, Somerset House, W.C.2, on personal application or by letter, and except *Forms* 10, 19 and H, they may also be obtained at Head Post Offices outside the Metropolitan Postal District, and at the Throgmorton Avenue Post Office, London Wall, E.C.2, on personal application.

Forms for use in Scotland may be obtained from the Registrar, Estate Duty Office, Edinburgh, on personal application or by letter, and except *Forms* 10, 19 and T, they may also be obtained at authorised Stamp and Post Offices in the country.

APPENDIX.

STATUTES RELATING TO DEATH DUTIES.

LEGACY DUTY ACT, 1796.

[36 George III, Chapter 52.]

[26th April, 1796.

As to rates see Stamp Act, 1815, infra.

6. And the duties hereby imposed shall, in all cases in which it is not hereby otherwise provided, be accounted for, answered and paid by the person or persons having or taking the burthen of the execution of the will or other testamentary instrument, or the administration of the personal estate of any person deceased, upon retainer for his, her or their own benefit, or for the benefit of any other person or persons, of any legacy or any part of any legacy, or of the residue of any personal estate or any part of such residue, which he, she or they shall be entitled so to retain either in his, her or their own right, or in the right or for the benefit of any other person or persons, and also upon delivery, payment or other satisfaction or discharge whatsoever of any legacy or any part of any legacy, or of the residue of any personal estate or any part of such residue, to which any other person or persons shall be entitled; and in case any person or persons having or taking the burthen of such execution or administration as aforesaid shall retain for his, her or their own benefit, or for the benefit of any other person or persons, any legacy or any part of any legacy, or the residue of any personal estate, or any part of such residue, which such person or persons shall be entitled so to retain, either in his, her or their own right, or in the right or for the benefit of any other person or persons, and upon which any duty shall be chargeable by virtue of this Act, not having first paid such duty, or shall deliver, pay or otherwise howsoever satisfy or discharge any legacy or any part of any legacy, or the residue of any personal estate or any part thereof, to which any other person or persons shall be entitled, and upon which any duty shall be chargeable by virtue of this Act, having received or deducted the duty so chargeable, then and in every of such cases the duty which shall be due and payable upon every such legacy and part of legacy and residue and part of residue respectively, and which shall not have been duly paid and satisfied to his Majesty, his heirs and successors, according to the provisions of this Act, shall be a debt of such person or persons having or taking the burthen of such execution or administration as aforesaid to his Majesty, his heirs and successors; and in case any such person or persons so having or taking the burthen of such execution or administration as aforesaid shall deliver, pay or otherwise howsoever satisfy or discharge any such legacy or residue or any part of any such legacy or residue, to or for the benefit of any person or persons entitled thereto, without having received or deducted the duty chargeable thereon (such duty not having been first duly paid to his Majesty, his heirs or successors, according to the provisions herein contained), then and in every such case such duty shall be a debt to his Majesty, his heirs and successors, both of the person or persons who shall make such delivery, payment, satisfaction or discharge, and of the person or persons to whom the same shall be made.

As to what are deemed legacies, see Revenue Act, 1845, *s.* 4, infra.

8. And the value of any legacy given by way of annuity, whether payable annually or otherwise, for any life or lives or for years determinable on any life or

lives, or for years or other period of time, shall be calculated and the duty chargeable thereon shall be charged according to the tables[1] in the schedule hereunto annexed, and the duty chargeable on such annuity shall be paid by four equal payments, the first of which payments of duty shall be made before or on completing the payment of the first year's annuity, and the three others of such payments of duty shall be made in like manner successively before or on completing the respective payments of the three succeeding years' annuity respectively; and the value of any such annuity, if determinable upon any contingency besides the death of any person or persons, shall be calculated without regard to such contingency: Provided always, that if any such annuity shall determine by the death of any person before four years' payment of such annuity shall become due and payable, then and in such case the duty shall be payable in proportion only to so many of the payments of the said annuity as actually accrued and became due and payable; and in case any such annuity shall at any time determine upon any other contingency than the death of any person or persons, then and in such case not only all payments of duty which would otherwise become due after the happening of such contingency, if any such would become due, shall cease, but it shall be lawful for the person or persons who shall have paid any duties which shall have previously become due to apply for and obtain a return of so much of the duty so paid as will reduce the same to the like duty as would have been payable by such person or persons for such annuity, calculated according to the term for which the same shall have endured, which abatement the said commissioners for management of the stamp duties shall settle and determine according to the tables in the schedule hereunto annexed, and shall cause the amount of such abatement to be paid to the person or persons entitled to the same out of any monies in their hands arising from the duties imposed by this Act.

9. And the value of any legacy given by way of annuity for any life or lives, or for years determinable on any life or lives, or for years or other period of time, and charged on and made payable out of any other legacy or legacies, shall be calculated, and the duty shall be charged thereon, in the same manner as hereinbefore directed with respect to other annuities; and the duty on the legacy charged with such annuity, if any duty shall be payable for such legacy, shall be calculated on the value of such legacy after deducting the value of such annuity; and the duty for such annuity shall be paid by the person or persons entitled to the legacy or legacies charged with such annuity by four equal payments, in the same manner as the same would be payable according to the provisions hereinbefore contained if such annuity had been a direct gift to the annuitant, and subject to the like proviso in case such annuity shall determine before four years' payment shall become due; and the payment which shall be made for such duty shall be retained by the person or persons paying the same out of the first four years' payments of such annuity, if so many shall become due, or out of so many of such payments as shall become due, by equal portions.

10. And the duty payable upon any legacy given by direction to purchase with any personal estate of the testator or testatrix, or any part thereof, an annuity of a certain amount for the life or lives of any person or persons, or any other term, shall be calculated upon the sum necessary to purchase such annuity according to the tables before mentioned, and shall be deducted from such sum and paid as in the case of other pecuniary legacies; and the person or persons paying or satisfying such legacy, and the person or persons for whose benefit the same shall be paid or satisfied, shall be discharged by payment of such duty so calculated as aforesaid,

[1] These tables were repealed and the tables in the Succession Duty Act, 1853, substituted (*see* s. 31 of that Act).

from all other demands in respect of the duty payable on such legacy; and the annuity to be purchased for the benefit of the person or persons entitled to the benefit of such legacy shall be reduced in proportion to the amount of the duty payable thereon as aforesaid, such reduction to be calculated in the same manner as the duty so payable is hereinbefore directed to be calculated; and the purchase of such reduced annuity, together with the payment of such duty, shall satisfy and discharge such legacy as fully as if an annuity had been purchased equal in amount to the annuity so directed to be purchased.

11. And if any benefit shall be given by any will or testamentary instrument in such terms that the amount or value of such benefit can only be ascertained from time to time by the actual application for that purpose of the fund allotted for such purpose or made chargeable therewith, or if the amount or value of any benefit given by any will or testamentary instrument cannot by reason of the form and manner of the gift be so ascertained that the duty can be charged thereon under any other of the directions herein contained, then and in every such case such duty shall be charged upon the several sums of money or effects which shall be applied from time to time for the purposes directed by such will or testamentary instrument as separate and distinct legacies or bequests, and shall be paid out of the fund applicable for such purposes or charged with answering the same.

12. And the duty payable on the legacy or residue or part of residue of any personal estate given to or for the benefit of or so that the same shall be enjoyed by different persons in succession, who shall be chargeable with the duties hereby imposed at one and the same rate, shall be charged upon and paid out of the legacy or residue or part of residue so given, as in the case of a legacy to one person; and where any legacy or residue or part of residue shall be given to or for the benefit of or so that the same shall be enjoyed by different persons in succession, some or one of whom shall be chargeable with no duty, or some of whom shall be chargeable with different rates of duty, so that one rate of duty cannot be immediately charged thereon, all persons who under or in consequence of any such bequest shall be entitled for life only, or any other temporary interest, shall be chargeable with the duty in respect of such bequest in the same manner as if the annual produce thereof had been given by way of annuity; and such persons respectively shall be so chargeable with such duty and the same shall be payable, when they shall respectively become entitled to and begin to receive such produce, and shall be paid by equal portions during the aforesaid term of four years, if they shall so long continue to receive such produce; and where any other partial interest shall be given or shall arise out of such property so to be enjoyed in succession, the duty on such partial interest shall be charged and paid in the same manner as the duty is hereinbefore directed to be charged and paid in like cases of partial interests charged on any property given otherwise than to different persons in succession; and all and every person and persons who shall become absolutely entitled to any such legacy or residue or part of residue so to be enjoyed in succession shall, when and as such person or persons respectively shall receive the same or begin to enjoy the benefit thereof, be chargeable with and pay the duty for the same or such part thereof as shall be so received or of which the benefit shall be so enjoyed, in the same manner as if the same had come to such person or persons immediately on the death of the person by whom such property shall have been given to be enjoyed or in such manner that the same shall be enjoyed in succession.

13. And the duty payable on any legacy or residue or part of residue so given to or so to be enjoyed by different persons in succession, upon whom the duty shall be chargeable at one and the same rate, shall be deducted and paid by the person or persons having or taking the burthen of the execution of the will or testamentary instrument under which the title thereto shall arise, upon payment or other satisfaction or discharge of every or any part of such legacy or residue or part of residue to any trustee or trustees or other person or persons to whom the same shall be

payable or paid in trust or for the benefit of the persons so entitled thereto in succession; and if the same shall not be so paid or satisfied to any such trustee or trustees, then such duty shall be deducted and paid out of the capital of the property so given, upon receipt by any of the persons so entitled in succession of any produce of such capital or any part thereof, according to the amount of the capital of which such produce shall be so received; and where the duty chargeable upon any such bequest for the benefit of or to be enjoyed by different persons in succession shall be chargeable at different rates, so that the same cannot be paid at one and the same time, but must be paid in succession as aforesaid, then and in such case all and every the person and persons having or taking the burthen of the execution of the will or testamentary instrument in which such bequest shall be contained, shall be chargeable with such duties in succession, in the same manner as such persons would be chargeable with the like duties in case of immediate bequest, unless the property bequeathed shall have been paid or otherwise satisfied to or vested in any trustees or trustee as aforesaid, in which case such trustees or trustee, or his, her or their representatives, shall be chargeable with the duties for and in respect of such property so vested in him, her or them respectively, in such and the same manner as if he, she or they had had or taken the burthen of the execution of the will or testamentary instrument by which such bequest shall have been made; and in like manner, where any partial interest shall be given or shall arise out of any such property so to be enjoyed in succession, and such partial interest shall be satisfied or paid by the person or persons so enjoying such property, such person or persons shall be chargeable with the duties for and in respect of such partial interest, and shall retain and pay the same accordingly, in such and the same manner as if he, she or they had had or taken the burthen of the execution of the will or testamentary instrument by which such partial interest shall have been created; and in all such cases the person or persons so chargeable with duty shall be debtors to the King's Majesty, his heirs and successors, in like manner, and shall be subject to the like penalties, as the person or persons having or taking the burthen of the execution of such will or testamentary instrument are hereby made chargeable and subject to.

14.[1] Provided always, that no duty shall be paid on any articles of plate, furniture or other things not yielding any income, [and given to or for the benefit of or so as that the same be enjoyed by different persons in succession,] whilst the same shall be [so] enjoyed in kind only by any person or persons [not having any power of selling or disposing thereof, so as to convert the same into money or other property yielding an income]; but if the same shall be actually sold or disposed of, [or shall come to any person or persons having power to sell or dispose thereof or having an absolute interest therein,] then and in each and every such case the [same] duty shall be chargeable and paid thereon [as if the same had been originally given absolutely and with full power to sell or dispose thereof], and shall be chargeable upon and paid by the person or persons for whose benefit the same shall be sold, [or who shall have power to sell or dispose thereof or an absolute interest therein,] and shall become the debt of such person or persons, but shall not be a charge on any person or persons by reason of his, her or their having assented to such bequest as the person or persons having or taking the burthen of the execution of the will or testamentary instrument by which such bequest shall have been made.

15. Provided always, that where any legacy or any residue or part of residue shall be so given by any will or testamentary instrument that different persons shall become entitled thereto in succession, the duty shall be charged thereon as given to be enjoyed in succession, whether the person or persons entitled thereto

1 The words in square brackets were repealed by F.A. 1910, s. 96 (1), so far as s. 14 applies to objects which appear to the Treasury to be of national, scientific, historic, or artistic interest.
But see now F. A. 1930. s. 40.

shall take the same under or by virtue of such will or testamentary instrument and the dispositions therein contained, or in default of such dispositions and as entitled by intestacy.

16. And where any legacy, or residue or part of residue shall be given to or for the benefit of any person or persons in joint tenancy, some or one of whom shall be chargeable with any duty hereby imposed, and some or one of whom shall not be so chargeable, the person or persons chargeable with duty shall pay such duty in proportion to the interest of such person or persons respectively in such bequest; and if any person or persons chargeable with duty and entitled in joint tenancy as aforesaid shall become entitled by survivorship or by severance of the joint tenancy to any larger interest in the property bequeathed than that in respect of which such duty shall have been paid, then and in such case all and every such person or persons so becoming entitled by survivorship or by severance shall be charged with the same duty as if the property to which such joint tenant or joint tenants shall so become entitled had been originally given to or for the benefit of such person or persons only.

17. And when any legacy, or any residue or part of residue shall be given subject to any contingency which may defeat such gift, and whereupon the same may go to some other persons or person, such bequest (unless chargeable as an annuity under the provisions herein contained) shall be charged with duty as an absolute bequest to the person or persons who shall take the same subject to such contingency, and such duty shall be paid out of the capital of such legacy or residue or part of residue, notwithstanding the same may upon such contingency go to some person not chargeable with the same duty or with any duty; and if such contingency shall afterwards happen, and the property so bequeathed shall thereupon go in such manner that the same if taken immediately after the death of the testator or testatrix, under the same title would have been chargeable with a higher rate of duty than the duty so paid, the person or persons becoming entitled thereto shall be charged with and shall pay the difference between the duty so paid and such higher rate of duty.

18. And where any legacy or the residue or any part of the residue of any personal estate shall be subjected to any power of appointment to or for the benefit of any person or persons specially named or described as objects of such power, such property shall be charged with duty as property given to different persons in succession; and in so charging such duty, not only the person and persons who shall take previous or subject to such power of appointment, but also any person and persons who shall take under or in default of any such appointment, when and as they shall so take respectively, shall in respect of their several interests, whether previous or subject to or under or in default of such appointment, be charged with the same duty and in the same manner as if the same interests had been given to him, her or them respectively in and by the will or testamentary disposition containing such power, in the same order and course of succession as shall take place under and by virtue of such power of appointment, or in default of execution thereof, as the case may happen to be; and where any property shall be given for any limited interest, and a general and absolute power of appointment shall also be given to any person or persons to whom the property would not belong in default of such appointment, such property upon the execution of such power shall be charged with the same duty and in the same manner as if the same property had been immediately given to the person or persons having and executing such power, after allowing any duty before paid in respect thereof; and where any property shall be given with any such general power of appointment, which property in default of appointment will belong to the person or persons to whom such power shall also be given, such property shall be charged with and shall pay the duty by this Act imposed, in the same manner as if such property had been given to such person or persons absolutely in the first instance, without such power of appointment.

19. And any sum of money or personal estate directed to be applied in the purchase of real estate shall be charged with and pay duty as personal estate, unless the same shall be so given as to be enjoyed by different persons in succession, and then each person entitled thereto in succession shall pay duty for the same in the same manner as if the same had not been directed to be applied in the purchase of real estate, unless the same shall have been actually applied in the purchase of real estate before such duty accrued; but no duty shall accrue in respect thereof, after the same shall have been actually applied in the purchase of real estate, for so much thereof as shall have been so applied: Provided nevertheless, that in case, before the same or some part thereof shall be actually so applied, any person or persons shall become entitled to an estate of inheritance in possession in the real estate to be purchased therewith or with so much thereof as shall not have been applied in the purchase of real estate, the same duty which ought to be paid by such person or persons, if absolutely entitled thereto as personal estate by virtue of any bequest thereof as such, shall be charged on such person or persons, and raised and paid out of the fund remaining to be applied in such purchase.

20. And estates *pur autre Vie*, applicable by law in the same manner as personal estate, shall be charged with the duties hereby imposed as personal estate.

21. Provided always, that if any direction shall be given by any will or testamentary instrument for payment of the duty chargeable upon any legacy or bequest out of some other fund, so that such legacy or bequest may pass to the person or persons to whom or for whose benefit the same shall be given free of duty, no duty shall be chargeable upon the money to be applied for the payment of such duty, notwithstanding the same may be deemed a legacy to or for the benefit of the person or persons who would otherwise pay such duty.

22. And in cases of specific legacies, and where the residue of any personal estate shall consist of property which shall not be reduced into money, it shall be lawful for the person or persons having or taking the burthen of the administration of such effects, or the person or persons by whom the duty thereon ought to be paid, to set a value thereon and offer to pay the duty according to such value, or to require the commissioners for management of the stamp duties to appoint a person to set such value, at the expense of the person or persons by whom such duty ought to be paid; and it shall be lawful for the commissioners to accept the duty offered to be paid upon the value set by the person or persons having or taking the administration of such effects, or by whom the duty for the same shall be payable, without such appraisement, if the said commissioners shall think fit so to do; but if the said commissioners shall not be satisfied with the value so set, on which the duty shall be so offered, it shall be lawful for the said commissioners, notwithstanding such offer, to appoint a person to appraise such effects and to set the value thereon, on which value so set the said commissioners shall assess the duty payable in respect thereof and require the same to be paid. . . .

23. And where any legacy or part of any legacy, or residue or part of residue, whereon any duty shall be chargeable by this Act shall be satisfied otherwise than by payment of money or application of specific effects for that purpose, or shall be released for consideration or compounded for less than the amount or value thereof, then and in such case the duty shall be charged and paid in respect of such legacy or part of legacy or residue or part of residue according to the amount or value of the property taken in satisfaction thereof, or as the consideration for release thereof or composition for the same: Provided always, that if any legacy or bequest shall be made in satisfaction of any other legacy or bequest or title to any residue or part of residue of any personal estate remaining unpaid, the duty shall not be paid on both subjects, although both may be chargeable with duty, but shall be paid on the subject yielding the largest duty.

24. And if any person or persons having or taking the burthen of the execution of the will or other testamentary instrument or the administration of the personal

estate of any person deceased, or any other person or persons hereby made chargeable with duty, shall declare himself, herself or themselves ready and willing, and shall accordingly offer to pay any pecuniary legacy or residue or part of residue, deducting the duty payable thereon, or shall in like manner offer to deliver or otherwise dispose of any specific legacy or any specific property, part of any residue of any personal estate, to or for the benefit of the person or persons entitled thereto, or to any trustee or trustees for such person or persons, upon payment of the duty payable in respect thereof, and the person or persons entitled to such legacy or residue or part of residue, or the trustee or trustees for such person or persons, shall refuse to accept such offer and to give a proper release and discharge for such legacy or residue, or so much thereof as shall be offered to be paid, delivered or otherwise disposed of as aforesaid, then and in such case, although no actual tender shall be made, if any suit shall be afterwards instituted for such legacy or effects respecting which such offer shall have been made, it shall be lawful for the court in which such suit shall be instituted to order all costs, charges and expenses attending the same to be paid by the person or persons who shall have refused to accept such offer and to give or join in such release or discharge, or to order such costs, charges and expenses to be deducted and retained out of such legacy or effects, together with the duty payable thereon, as the said court shall see fit; and in case any suit shall be instituted for payment of any legacy or residue or part of residue of any personal estate, and the person or persons sued for the same shall be desirous of staying proceedings in such suit, on payment of the money due, or delivering or otherwise disposing of the specific effects demanded, after deducting or receiving the duty payable thereon, it shall be lawful for the court in which such suit shall be instituted, if it shall see fit, on application in a summary way, to make such order for payment of such legacy or residue or part of residue, or for delivering or otherwise disposing of such effects, and for payment of the duty payable thereon, and all such costs, charges and expenses attending such suit, as shall be just.

25. And if any suit shall be instituted concerning the administration of the personal estate of any person dying testate or intestate, or any part of such estate, in which any direction shall be given touching the payment of any legacies or legacy of such person, or the residue of his or her personal estate, or any part thereof, the court wherein such suit shall be instituted shall, in giving directions concerning the same, provide for the due payment of the duties hereby imposed; and in taking any account of any personal estate or otherwise acting concerning the same, such court shall take care that no allowance shall be made in respect of any legacy or part of legacy or of any residue or part of residue in any manner whatsoever without due proof of the payment of the duties hereby imposed.

And see Succession Duty Act, 1853, *s.* 53.

26. Provided always, that any person or persons having or taking the burthen of the execution of any will or other testamentary instrument or the administration of the personal estate of any person deceased may from time to time pay, deliver or otherwise dispose of any legacy or any part of any legacy, or make distribution of any part of the residue of any personal estate, on payment from time to time, of such proportions of the duty hereby imposed as shall accrue in respect of such part of such personal estate as shall be so administered.

27. And no person or persons having or taking the burthen of the execution of any will or testamentary instrument or the administration of the personal estate of any person deceased, nor any trustee or trustees or other person or persons hereby directed and required to account for any duty, shall from and after the passing of this Act pay, deliver or otherwise dispose of or in any manner satisfy, discharge or compound for any legacy whatsoever or any part thereof, or the residue of any personal estate or any part thereof, in respect whereof any duty is hereby imposed, without taking a receipt or discharge in writing for the same, expressing the date

of such receipt or discharge, and the names of the testator, testatrix or intestate under whose will or testamentary disposition or upon whose intestacy the title to such legacy or part of legacy or to such residue or part of residue shall accrue, and of the person or persons to whom such receipt or discharge shall be given, and of the person or persons to whom such legacy or residue or part of residue shall have been given or shall have belonged in consequence of intestacy, and the amount or value of the legacy or part of legacy or residue or part of residue for which such receipt or discharge shall be given, and also the amount and rate of the duty payable and allowed thereon: and that no written receipt or discharge for any legacy or part of any legacy, or for the residue of any personal estate or any part of such residue, in respect whereof any duty is hereby imposed, shall be received in evidence or be available in any manner whatever unless the same shall be stamped as required by this Act: and no evidence whatsoever shall be given of any payment, satisfaction or discharge whatsoever, or of any release or composition of such legacy or any part thereof, or of such residue or any part thereof, without producing such receipt or discharge duly stamped as aforesaid, unless the actual payment of the duty hereby imposed shall first be given in evidence: Provided always, that a copy of the entry in the books of the commissioners of the stamps of the payment of such duty shall be admitted as evidence thereof: Provided also, that payment of any annuity shall not be deemed a payment for which such stamped receipt shall be required under the directions of this Act, except the several payments which shall complete the payments for each of the first four years during which such annuity shall be payable; and in like manner any payment in respect of any legacy or bequest hereby directed to be charged with the duty in the same manner as annuities are hereby made chargeable with duty, shall not be deemed a payment for which such stamped receipt shall be required, except the several payments which shall complete the payments for each of the first four years in respect of which such legacy or bequest shall be chargeable with duty as an annuity.

28. And any person having or taking the burthen of the execution of any will or testamentary instrument or the administration of the personal estate of any person deceased, and any trustee or trustees or other person or persons hereby directed and required to account for any duty, who shall pay, deliver or otherwise dispose of, or in any manner satisfy or discharge or compound for any legacy given by such will or testamentary instrument, or the residue or any part of the residue of such personal estate, to or for the benefit of any person or persons entitled to such legacy or any part thereof, or to such residue or any part thereof, without taking such receipt or discharge in writing as aforesaid, and causing the same to be stamped within the time hereby allowed for stamping the same, shall forfeit and lose the sum of ten pounds *per centum* on the sum of money, or the value of the property if not money, for which such receipt or discharge ought to have been given in pursuance of this Act; and all and every person and persons receiving or taking the benefit of any such money or other property without giving a written receipt or discharge for the same, in which the duty payable in respect thereof shall be expressed to have been allowed or paid to the person or persons to whom such receipt or discharge shall be given, and which shall bear date on the day of signing the same, shall forfeit and lose the sum of ten pounds *per centum* on the sum of money or on the value of the property, so received or taken.

29. And every such receipt or discharge shall be brought, within the space of twenty-one days after the date thereof, to the said head office of the said commissioners, or to some other office to be appointed by the said commissioners for such purpose, to be stamped, paying the duty for the same; and upon such payment, either at the said head office or at any other office to be appointed as aforesaid, the receiver general or other proper officer to be appointed for that purpose by the said commissioners, as the case shall require, shall write upon such receipt or discharge an acknowledgment of the payment of the duty so paid in words at

length, and bearing date the day on which such payment shall be made, and shall subscribe his name thereto, and enter an account thereof in a book or books to be provided for that purpose, to the intent that he may be thereby charged with the sum so paid; and in case the duty shall be so paid at the said head office, then the receipt or discharge so brought to be stamped shall be forthwith stamped with one of the said four stamps as the case shall require; and in case the duty shall be so paid at any other office to be appointed by the said commissioners as aforesaid, the receipt or discharge whereon such acknowledgment of the payment of duty shall be so written and subscribed shall be transmitted, within the space of twenty-one days from the day of payment of such duty, to the said head office to be stamped, and the same shall be stamped accordingly with one of the said four stamps, as the case shall require; and in case the person or persons paying such duty at any such office to be appointed as aforesaid shall be desirous that the same should be transmitted to the said head office by the officer to whom such duty shall be paid, and shall leave the same with such officer for such purpose, such officer shall thereupon sign and deliver an acknowledgment that such receipt or discharge has been left with him for such purpose, and shall transmit such receipt or discharge to such head office to be stamped as aforesaid, and the same shall be sent again to such officer as soon as conveniently may be after the stamping thereof, and such officer shall deliver back the same to the person or persons entitled thereto, upon re-delivery to him of the acknowledgment which he shall have given for the same: Provided always, that if any such receipt or discharge shall not be so brought to any such office as aforesaid within such space of twenty-one days as aforesaid, it shall nevertheless be lawful to carry such receipt or discharge to the said head office to be stamped in like manner within three calendar months after the date thereof, paying the duty for the same, and also the further, sum of ten pounds *per centum* on such duty, by way of penalty for not having before paid such duty, on payment of which duty and penalty the said commissioners are hereby authorized and required to stamp such receipt or discharge in the same manner as if the same had been brought to the said office within the space of twenty-one days from the date thereof; but the said commissioners, or any of their officers shall not on any pretence whatever, except as hereinafter directed, stamp any vellum, parchment or paper, upon which any receipt or discharge for any legacy or part of legacy, or any residue of any personal estate or any part thereof, shall be written or signed, with the said new stamps or any of them, unless the duty for the same shall be paid, and such receipt or discharge shall be produced to be so stamped in manner aforesaid, within the times and in the manner hereinbefore respectively limited and appointed.

And see Probate & Legacy Duties Act, 1808, *s.* 44.

30. And if it shall appear to the satisfaction of the said commissioners of stamp duties, upon oath or affirmation to be administered by a justice of the peace, or master or masters extraordinary in Chancery, which oath or affirmation such persons are hereby empowered to administer, that less duty has been paid for any legacy or residue or part of residue than ought to have been paid for the same by mistake, without any intention to defraud, and if application shall be made to the said commissioners to rectify such mistake and accept the duty really due before any suit shall be instituted concerning the same, and within three calendar months after payment of the money actually paid instead of the just duty, it shall be lawful for the said commissioners to accept the difference between the money paid and the just duty, together with the sum of ten pounds *per centum* on such difference, by way of penalty, in full for the just duty, and which shall be in discharge of all penalties incurred by non-payment of such duty, and to cause an acknowledgment of the payment of the just duty to be written on the receipt or discharge given for such legacy or residue or part of residue, and to be subscribed by the proper officer, and also to cause such receipt or discharge to be properly stamped,

if necessary, in the same manner as would have been done if the just duty had been originally paid.

And see Customs & Inland Revenue Act, 1880, *s.* 12, *and Customs & Inland Revenue Act*, 1888, *s.* 14.

31. Provided always, that the party or parties paying or satisfying any legacy or any residue of any personal estate or any part of such residue, or receiving the same, contrary to the provisions of this Act, who shall, within the space of twelve calendar months after the offence committed, discover the other party or parties offending therein, so that such party or parties so discovered be thereupon convicted, such person so discovering shall be indemnified and discharged from all penalties incurred for any offence against this Act.

32. *This section provided for payment of a legacy or residue into Court in certain specified cases. It also made provision where money had been improperly paid in and where more or less than the proper duty had been paid. The section was however repealed, except as to Scotland, by the Trustee Act*, 1893, *s.* 51. *As to England and Wales, see now Trustee Act*, 1925, *s.* 63.

33. *This section deals with compounding duties, but is not of practical importance* (*see now Customs & Inland Revenue Act*, 1880, *s.* 11; *Customs & Inland Revenue Act*, 1881, *s.* 43; *and F. A.* 1894, *s.* 13).

34. And if at any time after payment of duty on any legacy or residue or part of residue of the personal estate of any person deceased any debt shall be recovered against the estate of such deceased person, or any loss shall happen, by reason whereof, or for any other just cause, any legatee or other person by whom any legacy or part of legacy or any residue of any personal estate hath been received or retained shall be obliged to refund the same or any part thereof, then in every such case it shall be lawful for the said commissioners of stamp duties, and they are hereby required, on due proof made on oath as aforesaid to their satisfaction, of the amount of such sums refunded, and that by reason thereof there hath been an over-payment of duty, to settle and adjust the amount of such over-payment, and to repay the same out of the money in their hands arising from the duties by this Act imposed, or to allow the same in future payments, as the case may permit or require.

35. And whenever any person or persons having or taking the burthen of the execution of any will or testamentary instrument or the administration of any personal estate as aforesaid shall be entitled to any legacy or the residue or any part of the residue of the personal estate of any testator, testatrix or intestate, such person shall be chargeable with the duty whenever he, she or they shall be entitled, in the due course of administration, to retain to his, her or their own use any part of the said estate in satisfaction of such legacy or residue or any part thereof; and every such person, before any such retainer, shall transmit to the said commissioners of stamp duties or their officers a note containing the particulars of such legacy, residue or part of residue intended to be retained, and the amount or value thereof, and the duty which such person or persons shall offer to pay thereon; and the said commissioners shall charge and assess the duty thereon in such manner as the duty shall be chargeable thereon by virtue of the provisions in this Act contained, and such duty shall be paid accordingly; and on payment of the said duty the said receiver general of the said duty or officer appointed to receive the same shall at the foot of a duplicate of the said assessment duly stamped, in such manner as the said commissioners shall direct for such purpose, give a receipt for such duty in such form of words as the said commissioners shall direct, which receipt shall be a discharge for the duty expressed therein; and in case any such person or persons shall neglect to pay such duty as aforesaid within fourteen days after the same ought to have been paid as aforesaid, every such person and persons shall forfeit and pay treble the value of the duty which ought to have been paid.

37. And if the authority under or by colour of which any person shall have administered the estate or effects of any person deceased or any part thereof shall

be void or be repealed or declared void and such person shall before the avoidance, repeal or declaration of avoidance have paid any duty hereby imposed or any duty imposed by any of the said former Acts, which shall not be allowed to such person out of the estate or effects of such deceased person, by reason that the same duty was not really due or payable, the money paid for such duty shall, on proof thereof to the satisfaction of the said commissioners of stamp duties, be repaid to the person or persons who shall have paid the same, or his, her or their representatives, by the said commissioners out of any monies in their hands arising from the duties imposed by this Act or the said former Acts; but in case such duty ought to have been paid by the rightful executor or executors, administrator or administrators, of such deceased person, then and in such case the payment of such duty shall be valid and effectual notwithstanding such avoidance, repeal or declaration of avoidance, as aforesaid; and no such person shall by reason of the avoidance, repeal or declaration of avoidance of such authority be sued, molested or troubled for or in respect of such payment; but all such payments in respect of the said duty shall be allowed in account with such rightful executor or executors, administrator or administrators, and the same shall be deemed payment in the due course of administration as fully and effectually as if such payments had been made by rightful executors or administrators, any law, usage or custom to the contrary notwithstanding.

38. And if any person or persons, upon any oath or affirmation before the said commissioners of stamp duties or commissioners of land tax, or any person or persons authorized by this Act to administer any such oath or affirmation, shall wilfully and corruptly swear, affirm or allege any matter or thing which shall be false or untrue, with intent to defraud his Majesty of any of the said duties hereby imposed, or with intent to charge any person or persons with any greater or other duty than such person or persons ought to be charged with, every such person or persons so offending, and being thereof duly convicted, shall be and is and are hereby declared to be subject and liable to such pains and penalties as by any law now in being any person convicted of wilful and corrupt perjury is subject and liable to.[1]

39. And if any person shall alter any word, letter, figure or number in any assessment or receipt to be made or given in pursuance of this Act for any of the said duties, after the same shall have been signed by the officer appointed to sign the same according to the directions of this Act, or shall utter or publish as true any such altered assessment or receipt with intent to defraud his Majesty, his heirs or successors, or any other person or persons, then and in such case every person so altering, uttering or publishing as aforesaid shall forfeit and pay the sum of five hundred pounds.

41. Provided always, that every receipt or discharge for any legacy or any part of any legacy, or for any residue or part of residue of any personal estate, which shall be duly stamped as required by this Act, shall be free and discharged from all stamp duties imposed by the said recited Acts or by any other Act of Parliament upon receipts or discharges for money; and that every such receipt or discharge which shall be duly stamped as required by the said recited Acts, and upon which no new duty is imposed by this Act, shall be also free and discharged from any stamp duty imposed by any other Act upon receipts or discharges for money.

43. And one moiety of all pecuniary penalties and forfeitures hereby imposed, where no other mode of prosecution is specially prescribed by this Act, shall, if sued for within the space of three calendar months from the time of any such penalty or forfeiture being incurred, be to his Majesty, his heirs and successors, and the other moiety thereof, with full costs of suit, to the person or persons who shall inform or sue for the same within the time aforesaid, and which shall and may be sued for in his Majesty's Court of Exchequer at Westminster for offences committed

[1] *See* the Perjury Act, 1911.

in England, or in his Majesty's Court of Exchequer in Scotland for offences committed in Scotland, by action of debt, bill, plaint or information, wherein no essoin, privilege, wager of law or more than one imparlance shall be allowed; but nevertheless it shall be lawful for his Majesty's attorney general in England, or his Majesty's advocate in Scotland, in case it shall appear to his satisfaction that such penalty was incurred without any intention of fraud, to stop all further proceedings, by entering a noli prosequi or otherwise, with respect as well to the share of such penalty claimed by such informer or informers as to the share thereof belonging to his Majesty.

See Inland Revenue Act, 1868, *s.* 9, *and Inland Revenue Regulation Act*, 1890, *ss.* 22, 32, 33, 35.

44. Provided always, that in default of prosecution within the time hereinbefore limited no such penalty or forfeiture shall be afterwards recoverable, except in the Name of his Majesty's attorney general in England and of his Majesty's advocate in Scotland, by information in the Court of Exchequer in England or Scotland respectively, in which case the whole of such penalty or forfeiture shall belong to his Majesty, his heirs and successors; and that all penalties and forfeitures and shares of penalties and forfeitures incurred as aforesaid belonging to his Majesty, his heirs or successors, shall be paid into the hands of the receiver general of his Majesty's stamp duties for the time being, any law, usage or custom to the contrary notwithstanding; and that in all cases where the whole of such pecuniary penalties or forfeitures shall be recovered to the use of his Majesty, his heirs or successors, it shall be lawful for the said commissioners to cause such reward as they shall think fit, not exceeding one moiety of such penalty or forfeiture so recovered, after deducting all charges and expenses incurred in recovering the same, to be paid thereout to or amongst any person or persons who shall appear to them entitled thereto as informers in respect of such penalties or forfeitures so recovered, anything herein contained to the contrary notwithstanding.

LEGACY DUTY ACT, 1799.

[39 George III, Chapter 73.]

[12th July, 1799.

1. . . . . no legacy consisting of books, prints, pictures, statutes, gems, coins, medals, specimens of natural history, or other specific articles, which shall be given or bequeathed to or in trust for any body corporate, whether aggregate or sole, or to the Society of Serjeants Inn, or any of the Inns of Court or Chancery, or any endowed school, in order to be kept and preserved by such body corporate, society or school, and not for the purposes of sale, shall be liable to any duty imposed on legacies by any law now in force.

LEGACY DUTY ACT, 1805.

[45 George III, Chapter 28.]

[5th April, 1805.

5. And the duties hereby granted upon legacies, or charged upon or made payable out of any real estate, or out of any moneys to arise by the sale of any real estate, or upon residues or parts or shares of residues of any such moneys, shall be accounted for, answered, and paid by the trustee or trustees to whom the real estate shall be devised, out of which the legacy or legacies, or share or shares of any money arising out of the sale or mortgage or other disposition of such real estate shall be to be paid or satisfied, or if there shall be no trustees then by the person or persons entitled to such real estate subject to any such legacy, or by the person or persons empowered or required to pay or satisfy any such legacy, and the said duties shall be retained by the person paying or satisfying any such legacy or share of money, in like manner, and according to such rules and regulations

and under and subject to such penalties, as far as the same can be made applicable, as are contained in an Act passed in the thirty-sixth year of the reign of his present Majesty, intituled, "An Act for repealing certain duties on legacies and shares of personal estates, and for granting other duties thereon in certain cases."

7. All the provisions, clauses, regulations, penalties, forfeitures, matters, and things in the said Act contained in relation to legacies out of personal estates or to the collecting any duties thereon, or valuation of any annuities, or periods of paying the duties thereon by instalments or otherwise, shall, so far as the same can be made applicable, and in all cases not expressly provided for by this Act, extend to and be put in force in relation to legacies, annuities and shares of money arising or to arise out of any real estate; and all directions, provisions, forfeitures, and penalties in the said Act contained as to executors and administrators shall be applied to all trustees and owners of any real estates chargeable with legacies, annuities, or shares of money, or out of which, or any money to arise therefrom, against any such legacies, annuities, or shares of money shall be to be satisfied, as fully and amply as if all such provisions, clauses, regulations, penalties, forfeitures, matters, and things had been repeated and re-enacted in this Act in relation to legacies, annuities, and shares of money arising or to arise out of any real estate.

PROBATE AND LEGACY DUTIES ACT, 1808.

[48 George III, Chapter 149.]

[2nd July, 1808.

Section 43, *repealed by Statute Law Revision Act*, 1888, *related to cases of accidental non-payment of duty.*

44. And in all cases not provided for by the preceding clause, where any receipt or discharge given for any legacy or for the residue or any share of the residue of any personal estate which shall have been given by will or other testamentary instrument, or have devolved to any person or persons upon intestacy, shall be brought to the head office to be stamped after the expiration of three calendar months from the date thereof, it shall be lawful for the said commissioners to cause the same to be duly stamped for making the same available, on payment of the duty which shall be payable in respect thereof, together with the penalty incurred in consequence of the same not having been brought to be stamped before the expiration of such three calendar months; and where any such receipt or discharge shall have been signed out of Great Britain, if the same shall be brought to be stamped within twenty-one days after its being received in Great Britain, it shall be lawful for the said commissioners to remit any penalty that may have been incurred thereon, and to cause the same to be duly stamped on payment of the duty payable in respect thereof; anything contained in any former Act or Acts to the contrary notwithstanding.

STAMP ACT, 1815.

[55 George III, Chapter 184.]

[11th July, 1815.

2. *Enacts that the duties specified in schedule annexed are to be levied.*

37. *Imposes penalty for administering effects of a deceased person without proving the will or taking out letters of administration within a given time. But see s.* 57 *of the Crown Suits, &c. Act*, 1865, *and s.* 11 *of the Revenue Act*, 1884.

SCHEDULE PART III.

ii. Where the testator, testatrix, or intestate shall have died after the 5th day of April 1805.

	£	s.	d.
For every legacy, specific or pecuniary, or of any other description of the amount or value of £20 or upwards, given by any will or testamentary instrument of any person who shall have died after the 5th day of			

April 1805, either out of his or her personal or moveable estate or out of or charged upon his or her real or heritable estate or out of any moneys to arise by the sale, mortgage, or other disposition of his or her real or heritable estate or any part thereof, and which shall be paid, delivered, retained, satisfied, or discharged after the 31st day of August 1815 :

£ s. d.

Also for the clear residue (when devolving to one person) and for every share of the clear residue (when devolving to two or more persons) of the personal or moveable estate of any person who shall have died after the 5th day of April 1805 (after deducting debts, funeral expenses, legacies, and other charges first payable thereout), whether the title to such residue, or any share thereof, shall accrue by virtue of any testamentary disposition, or upon a partial or total intestacy; where such residue or share of residue shall be of the amount or value of £20 or upwards, and where the same shall be paid, delivered, retained, satisfied, or discharged after the 31st day of August 1815 :

And also for the clear residue (when given to one person) and for every share of the clear residue (when given to two or more persons) of the moneys to arise from the sale, mortgage, or other disposition of any real or heritable estate directed to be sold, mortgaged, or otherwise disposed of by any will or testamentary instrument of any person who shall have died after the 5th day of April 1805 (after deducting debts, funeral expenses, legacies, and other charges first made payable thereout, if any), where such residue, or share of residue shall amount to £20 or upwards, and where the same shall be paid, retained, or discharged after the 31st day of August 1815 :

[1] [Where any such legacy or residue or any share of such residue shall have been given or have devolved to or for the benefit of a child of the deceased, or any descendant of a child of the deceased, or to or for the benefit of the father or mother or any lineal ancestor of the deceased, a duty at and after the rate of one pound per centum on the amount or value thereof - - - - - - - - - - - - - - per cent. 1 0 0]

Where any such legacy or residue or any share of such residue shall have been given or have devolved to or for the benefit of a brother or sister of the deceased, or any descendant of a brother or sister of the deceased, a duty at and after the rate of three pounds per centum on the amount or value thereof - - - - - - - - - - per cent. 3 0 0

Where any legacy or residue or any share of such residue shall have been given or have devolved to or for the benefit of a brother or sister of the father or mother of the deceased, or any descendant of a brother or sister of the father or mother of the deceased, a duty at and after the rate of five pounds per centum on the amount or value thereof per cent. 5 0 0

Where any such legacy or residue or any share of such residue shall have been given or have devolved to or for the benefit of a brother or sister of a grandfather or grandmother of the deceased, or any descendant of a brother or sister of a grandfather or grandmother of the deceased, a duty at and after the rate of six pounds per centum on the amount or value thereof - - - - - - - - - - - - - - per cent. 6 0 0

And where any such legacy or residue or any share of such residue shall have been given or have devolved to or for the benefit of any person in any other degree of collateral consanguinity to the deceased than is above described, or to or for the benefit of any stranger in blood to the deceased, a duty at and after the rate of ten pounds per centum on the amount or value thereof - - - - - - - - per cent. 10 0 0

[1] The words in square brackets were repealed by the Statute Law Revision Act, 1890, but *see* F.A. 1910, s. 58, restoring this rate.

And all gifts of annuities, or by way of annuity, or of any other partial benefit or interest out of any such estate or effects as aforesaid, shall be deemed legacies within the intent and meaning of this schedule.

And where any legatee shall take two or more distinct legacies or benefits under any will or testamentary instrument which shall together be of the amount or value of £20, each shall be charged with duty, though each or either may be separately under that amount or value.

EXEMPTIONS.

Legacies and residues or shares of residue of any such estate or effects as aforesaid, given or devolving to or for the benefit of the husband or wife of the deceased, or to or for the benefit of any of the royal family.

And all legacies which were exempted from duty by the Act passed in the 39th year of his Majesty's reign, c. 73, for exempting certain specific legacies given to bodies corporate, or other public bodies, from the payment of duty.

And see also Customs & Inland Revenue Act, 1880, *s.* 13; *Customs & Inland Revenue Act*, 1881, *s.* 42; *F. A.* 1894, *s.* 1; *and F. A.* 1910, *s.* 58.

REVENUE ACT, 1845.

[8 & 9 VICTORIA, CHAPTER 76.]

[4th August, 1845.

4. . . . . every gift by any will or testamentary instrument of any person, which by virtue of any such will or testamentary instrument is or shall be payable or shall have effect or be satisfied out of the personal or moveable estate or effects of such person or out of any personal or moveable estate or effects which such person hath had or shall have had power to dispose of, or which gift is or shall be payable or shall have effect or be satisfied out of or is or shall be charged or rendered a burden upon the real or heritable estate of such person, or any real or heritable estate, or the rents or profits thereof, which such person hath had or shall have had any right or power to charge, burden, or affect with the payment of money, or out of or upon any moneys to arise by the sale, burden, mortgage, or other disposition of any such real or heritable estate, or any part thereof, whether such gift shall be by way of annuity or in any other form, and also every gift which shall have effect as a *donation mortis causa*, shall be deemed a legacy within the true intent and meaning of all the several Acts granting or relating to duties on legacies in Great Britain and Ireland respectively, and shall be subject and liable to the said duties accordingly: Provided always, that no sum of money which by any marriage settlement is or shall be subjected to any limited power of appointment to or for the benefit of any person or persons therein specially named or described as the object or objects of such power, or to or for the benefit of the issue of any such person or persons, shall be liable to the said duties on legacies under the will in which such sum is or shall be appointed or apportioned in exercise of such limited power.

SUCCESSION DUTY ACT, 1853.

[16 & 17 VICTORIA, CHAPTER 51.]

[4th August, 1853.

1. In the construction and for the purposes of this Act,

The term "real property" shall include all freehold, copyhold, customary, leasehold, and other hereditaments, and heritable property, whether corporeal or incorporeal, in *Great Britain* and *Ireland*, except money

secured on heritable property in *Scotland*, and all estates in any such hereditaments:

The term "personal property" shall not include leaseholds, but shall include money payable under any engagement, and money secured on heritable property in *Scotland*, and all other property not comprised in the preceding definition of real property:

The term "property" alone shall include real property and personal property:

The term "succession" shall denote any property chargeable with duty under this Act:

The term "trustee" shall include an executor and administrator, and any person having or taking on himself the administration of property affected by any express or implied trust:

The term "person" shall include a body corporate, company, and society:

The term "Legacy Duty Acts" shall denote the Acts now in force for charging duties on legacies and shares of the personal estates of deceased persons.

2. Every past or future disposition of property, by reason whereof any person has or shall become beneficially entitled to any property or the income thereof upon the death of any person dying after the time appointed for the commencement of this Act, either immediately or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and every devolution by law of any beneficial interest in property, or the income thereof, upon the death of any person dying after the time appointed for the commencement of this Act, to any other person, in possession or expectancy, shall be deemed to have conferred or to confer on the person entitled by reason of any such disposition or devolution a "succession"; and the term "successor" shall denote the person so entitled; and the term "predecessor" shall denote the settlor, disponer, testator, obligor, ancestor, or other person from whom the interest of the successor is or shall be derived.

3. Where any persons shall, at or after the time appointed for the commencement of this Act, have any property vested in them jointly, by any title not conferring on them a succession, any beneficial interest in such property accruing to any of them by survivorship shall be deemed to be a succession; and every person to whom any such interest shall accrue shall be deemed to be the successor; and the person upon whose death such accruer shall take place shall be deemed to be the predecessor; and where any persons after the time appointed for the commencement of this Act shall take any succession jointly, they shall pay the duty, if any, chargeable thereon by this Act in proportion to their respective interests in the succession; and any beneficial interest in such succession accruing to any of them by survivorship shall be deemed to be a new succession, derived from the predecessor from whom the joint title shall have been derived.

4. Where any person shall have a general power of appointment, under any disposition of property taking effect upon the death of any person dying after the time appointed for the commencement of this Act, over property, he shall, in the event of his making any appointment thereunder, be deemed to be entitled, at the time of his exercising such power, to the property or interest thereby appointed as a succession derived from the donor of the power; and where any person shall have a limited power of appointment, under a disposition taking effect, upon any such death, over property, any person taking any property by the exercise of such power shall be deemed to take the same as a succession derived from the person creating the power as predecessor.

5. Where any property shall at or after the time appointed for the commencement of this Act be subject to any charge, estate, or interest, determinable by the

death of any person, or at any period ascertainable only by reference to death, the increase of benefit accruing to any person or persons upon the extinction or determination of such charge, estate, or interest shall be deemed to be a succession accruing to the person, or the persons if more than one, then entitled beneficially to the property or the income thereof, according to his or their respective estates or interest therein, or beneficial enjoyment thereof; and the person or persons from whom such successor or successors respectively shall have derived title to the property so charged shall be deemed to be the predecessor or predecessors, as the case may be.

6. Provided that no person entitled, at the time appointed for the commencement of this Act, to the immediate reversion in any real property expectant upon the determination of any lease for life or for years determinable on life, shall be chargeable with duty in respect of such determination, in the event of the same occurring in his lifetime.

7. Where any disposition of property, not being a *bonâ fide* sale, and not conferring an interest expectant on death on the person in whose favour the same shall be made, shall be accompanied by the reservation or assurance of or contract for any benefit to the grantor, or any other person, for any term of life or for any period ascertainable only by reference to death, such disposition shall be deemed to confer at the time appointed for the determination of such benefit an increase of beneficial interest in such property, as a succession equal in annual value to the yearly amount or yearly value of the benefit so reserved, assured, or contracted for, on the person in whose favour such disposition shall be made.

8. Where any disposition of property shall be made to take effect at a period ascertainable only by reference to the date of the death of any person dying after the time appointed for the commencement of this Act, such disposition shall be deemed to confer a succession on the person in whose favour the same shall be made; and where any disposition of property shall purport to take effect presently, or under such circumstances as not to confer a succession, but by the effect or in consequence of any engagement, secret trust, or arrangement capable of being enforced in a court of law or equity, the beneficial ownership of such property shall not *bonâ fide* pass according to such disposition, but shall in fact devolve to any person on death, or at some period ascertainable only by reference to death, then such last-mentioned person shall be deemed to acquire the property so passing as a succession derived from the person making the disposition as the predecessor; and where any court of competent jurisdiction shall declare any disposition to have been fraudulent and made for the purpose of evading the duty imposed by this Act, it shall be lawful for such court to declare a succession to have been conferred on such person at such time and to such an extent as such court shall think just; and such last-mentioned person shall be deemed to have taken a succession accordingly derived from the person making such disposition as predecessor.

9. The duties hereinafter imposed shall be considered as stamp duties, and shall be under the care and management of the Commissioners of Inland Revenue, hereinafter called "The Commissioners"; who, by themselves and their officers, shall have the same powers and authorities for the collection, recovery, and management thereof, as are by an Act passed in the session holden in the twelfth and thirteenth years of the reign of her present Majesty, chapter one, or by any other Act or Acts, vested in them for the collection, recovery, and management of any stamp duties; and shall provide proper stamps for denoting the rate *per centum* of the duties payable under this Act; and shall have all other powers and authorities requisite for carrying this Act into execution.

10. There shall be levied and paid to her Majesty in respect of every such succession as aforesaid, according to the value thereof, the following duties that is to say)—

Where the successor shall be the lineal issue or lineal ancestor of the predecessor, a duty at the rate of one pound *per centum* upon such value :

Where the successor shall be a brother or sister, or a descendant of a brother or sister of the predecessor, a duty at the rate of three pounds *per centum* upon such value :

Where the successor shall be a brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the predecessor, a duty at the rate of five pounds *per centum* upon such value :

Where the successor shall be a brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother of the predecessor, a duty at the rate of six pounds *per centum* upon such value :

Where the successor shall be in any other degree of collateral consanguinity to the predecessor than is hereinbefore described, or shall be a stranger in blood to him, a duty at the rate of ten pounds *per centum* upon such value.

And see Customs & Inland Revenue Act, 1888, *s.* 21, *and F. A.* 1910, *s.* 58.

11. Where any person chargeable with duty under this Act in respect of any succession, or chargeable with duty under the Legacy Duty Acts in respect of any legacy bequeathed to him or her by a testator dying after the time appointed for the commencement of this Act, or in respect of the personal estate of any person dying after the same period, shall have been married to any wife or husband of nearer consanguinity than himself or herself to the predecessor, testator, or deceased person, then the person taking such succession, legacy or personal estate shall pay in respect thereof the same rate of duty only as such his or her wife or husband would have been chargeable with if she or he had taken the same.

12. Where any person shall take a succession under a disposition made by himself, then, if at the date of such disposition he shall have been entitled to the property comprised in the succession expectantly on the death of any person dying after the time appointed for the commencement of this Act, and such person shall have died during the continuance of such disposition, he shall be chargeable with duty on his succession, at the same rate as he would have been chargeable with if no such disposition had been made ; but a successor shall not in any other case be chargeable with duty upon a succession taken under a disposition made by himself, and no person shall be chargeable with duty upon the extinction or determination of any charge, estate or interest created by himself, unless at the date of the creation thereof he shall have been entitled to the property subjected thereto expectantly, on the death of some person dying after the time appointed for the commencement of this Act.

13. Where the successor shall derive his succession from more predecessors than one, and the proportional interest derived from each of them shall not be distinguishable, it shall be lawful for the commissioners to agree with the successor as to the duty payable ; but if no such agreement shall be made, the successor shall be deemed to have derived his succession in equal proportions from each predecessor, and shall be chargeable with duty accordingly.

14. Where the interest of any successor in any personal property shall, before he shall have become entitled thereto in possession, have passed by reason of death to any other successor or successors, then one duty only shall be paid in respect of such interest, and shall be due from the successor who shall first become entitled thereto in possession ; but such duty shall be at the highest rate which, if every such successor had been subject to duty, would have been payable by any one of them.

15. Where, at the time appointed for the commencement of that Act, any reversionary property expectant on death shall be vested, by alienation or other derivative title, in any person other than the person who shall have been originally entitled thereto under any such disposition or devolution as is mentioned in the second section of this Act, then the person in whom such property shall be so vested shall be chargeable with duty in respect thereof as a succession at the same time and at the same rate as the person so originally entitled would have been chargeable with if no such alienation had been made or derivative title created; and where, after the time appointed for the commencement of this Act, any succession shall, before the successor shall have become entitled thereto or to the income thereof in possession, have become vested by alienation or by any title not conferring a new succession in any other person, then the duty payable in respect thereof shall be paid at the same rate and time as the same would have been payable if no such alienation had been made or derivative title created; and where the title to any succession shall be accelerated by the surrender or extinction of any prior interests, then the duty thereon shall be payable at the same time and in the same manner as such duty would have been payable if no such acceleration had taken place.

16. Where property shall become subject to a trust for any charitable or public purposes, under any past or future disposition, which, if made in favour of an individual, would confer on him a succession, there shall be payable in respect of such property, upon its becoming subject to such trusts, a duty at the rate of ten pounds *per centum* upon the amount or principal value of such property; and it shall be lawful for the trustee of any such property to raise the amount of any duty due in respect thereof, with all reasonable expenses, upon the security of the charity property, at interest, with power for him to give effectual discharges for the money so raised.

17. No policy of insurance on the life of any person shall create the relation of predecessor and successor between the insurers and the assured or between the insurers and any assignee of the assured, and no bond or contract made by any person *bonâ fide* for valuable consideration in money or money's worth, for the payment of money or money's worth after the death of any other person, shall create the relation of predecessor and successor between the person making such bond or contract and the person to or with whom the same shall be made; but any disposition or devolution of the monies payable under such policy, bond, or contract, if otherwise such as in itself to create a succession within the provisions of this Act, shall be deemed to confer a succession.

18. Where the whole succession or successions derived from the same predecessor and passing upon any death to any person or persons shall not amount in money or principal value to the sum of one hundred pounds, no duty shall be payable under this Act in respect thereof or of any portion thereof; and no duty shall be payable under this Act upon any succession, which, as estimated according to the provisions of this Act, shall be of less value than twenty pounds in the whole, or upon any monies applied to the payment of the duty on any succession according to any trust for that purpose, or by any person in respect of a succession, who, if the same were a legacy bequeathed to him by the predecessor, would be exempted from the payment of duty in respect thereof under the Legacy Duty Acts; and no person shall be charged with duty under this Act in respect of any interest surrendered by him or extinguished before the time appointed for the commencement of this Act; and no person charged with the duties on legacies and shares of personal estate under the Legacy Duty Acts, in respect of any property subject to such duties, shall be charged also with the duty granted by this Act in respect of the same acquisition of the same property.

And see Customs & Inland Revenue Act, 1889, *s.* 10 (2).

19. No legatee or other person shall, after the time appointed for the commencement of this Act, be chargeable under the Legacy Duty Acts with duty, not then already due, in respect of any leasehold hereditaments of any testator or deceased person, as belonging to the personal estate of the testator or deceased.

20. The duty imposed by this Act shall be paid at the time when the successor, or any person in his right or on his behalf, shall become entitled in possession to his succession, or to the receipt of the income and profits thereof; except that if there shall be any prior charge, estate, or interest, not created by the successor himself, upon or in the succession, by reason whereof the successor shall not be presently entitled to the full enjoyment or value thereof, the duty in respect of the increased value accruing upon the determination of such charge, estate, or interest shall, if not previously paid, compounded for, or commuted, be paid at the time of such determination; and except that in case of an annuity, or property hereby made chargeable as an annuity, the duties shall be paid by such instalments as are herein after directed or referred to; provided that no duty shall be payable upon the determination of any lease purporting at the date thereof to be a lease at rackrent, in respect of the increase accruing to the successor upon such determination.

21. The interest of every successor, except as herein provided, in real property, shall be considered to be of the value of an annuity equal to the annual value of such property, after making such allowances as are herein after directed, and payable from the date of his becoming entitled thereto in possession, or to the receipt of the income or profits thereof during the residue of his life, or for any less period during which he shall be entitled thereto; and every such annuity for the purposes of this Act shall be valued according to the tables in the schedule annexed to this Act; and the duty chargeable thereon shall be paid by eight equal half yearly instalments, the first of such instalments to be paid at the expiration of twelve months next after the successor shall have become entitled to the beneficial enjoyment of the real property in respect whereof the same shall be payable, and the seven following instalments at half-yearly intervals of six months each, to be computed from the day on which the first instalment shall have become due, provided that if the successor shall die before all such instalments shall have become due, then any instalments not due at his decease shall cease to be payable, except in the case of a successor who shall have been competent to dispose by will of a continuing interest in such property, in which case the instalments unpaid at his death shall be a continuing charge on such interest, in exoneration of his other property, and shall be payable by the owner for the time being of such interest.

And see Customs & Inland Revenue Act, 1888, *s.* 22, *and F. A.* 1894, *s.* 18.

22. In estimating the annual value of lands used for agricultural purposes, houses, buildings, tithes, teinds, rent charges, and other property yielding or capable of yielding income not of a fluctuating character, an allowance shall be made of all necessary outgoings.

23.[1] [Where timber, trees, or wood, not being coppice of underwood, shall be comprised in any succession, the successor shall be chargeable with duty upon his interest in the net monies, after deducting all necessary outgoings for the year, which shall from time to time be received from any sales of such timber, trees, or wood, and shall account for and pay the same yearly; provided that no duty shall be payable on the net monies received from the sale of timber, trees, or wood in any one year unless such net monies shall exceed the sum of ten pounds; provided, that if the successor shall be desirous of commuting the duty, and shall deliver to the commissioners an estimate of the net monies obtainable by him from the sale of such timber, trees, and wood as may, in a prudent course of management of the

[1] Repealed by F. A. 1910 s. 96 (1), as to persons dying on or after 30th April, 1909.

property, be felled by such successor during his life, the commissioners, if satisfied with such estimate, shall accept the same and assess the duty accordingly.]

24. A successor shall not be chargeable with duty in respect of any advowson or church patronage comprised in his succession, unless the same, or some right of presentation, or some other interest in or out of such advowson or church patronage, shall be disposed of by or in concert with him for money or money's worth, in which case he shall be chargeable with duty upon the amount or value of the money or money's worth for which the same, or any such presentation or interest, shall be so disposed of at the time of such disposal.[1]

25. Where a successor, entitled to any real property subject to any lease by reason whereof he shall not be presently entitled to the full enjoyment thereof, shall not have paid duty in respect of the full yearly value of such property, he shall be chargeable with duty upon his interest in any fine or grassum or other consideration which may be received during his life for the renewal of any such lease, or the grant of any reversionary lease of the same property.

26. The yearly value of any manor, opened mine, or other real property of a fluctuating yearly income shall either be calculated upon the average profits or income derived therefrom, after deducting all necessary outgoings, during such a number of preceding years as shall be agreed upon for this purpose between the commissioners and the successor, before the first payment of duty on the succession shall have become due; or if no such period shall be agreed upon, then the principal value of such property shall be ascertained, and the annual value thereof shall be considered to be equal to interest calculated at the rate of three pounds *per centum per annum* on the amount of such principal value.

27. Where any body corporate, company, or society shall become entitled, as successors, to any real property, the duty in respect thereof shall be assessed upon the principal value of such property, but shall be payable by such instalments, at such times, and in such manner as the same would be payable if assessed in respect of property devolving on a successor in fee simple; and it shall be lawful for such body corporate, company, or society, or any trustee thereof, to raise the amount of any duty due in respect of their succession upon the security thereof, at interest, with power for them to give effectual discharges for the money so raised.

28. If a successor, or any person on his behalf, upon becoming entitled to any copyhold or other real property, shall be subject to any fines, casualties of superiority, compositions, reliefs, or charges incident to the tenure thereof, and due in respect of his succession, he shall be entitled to have a deduction allowed to him of the amount of such fines, casualties, compositions, reliefs, or charges from the assessable value of his interest in such copyhold or other real property.

29. The interest of any successor in monies to arise from the sale of real property under any trust for the sale thereof, so far as the same shall not be chargeable with duty under the Legacy Duty Acts, shall be deemed to be personal property chargeable with duty under this Act; provided that where such monies shall be subject to any trust for the re-investment thereof in the purchase of other real property, to which the successor would not be absolutely entitled, such monies shall be deemed to be real property, and for the purpose of this Act each successor's interest therein shall be considered to be of the value of an annuity, payable during his life, or for any less period during which he shall be entitled, equal in amount to the annual produce of the actual trust property at the time of his becoming entitled in possession, whether the same shall then be the real property subject to the trust or direction for sale, or any property purchased in substitution for it or any intermediate investment of the produce of the sale of the original property.

But see Customs & Inland Revenue Act, 1888, *s.* 21 (2).

[1] *See* Benefices Act, 1898, s. 1.

30. The interest of any successor in personal property subject to any trust for the investment thereof in the purchase of real property to which the successor would be absolutely entitled shall, so far as the same shall not be chargeable with duty under the Legacy Duty Acts, be chargeable with duty under this Act as personal property; and personal property subject to any trust for the investment thereof in the purchase of real property to which the successor would not be absolutely entitled shall, so far as the same shall not be chargeable with duty under the Legacy Duty Acts, be chargeable with duty under this Act as real property; and for the purposes of this Act each successor's interest therein shall be considered to be of the value of an annuity, payable during his life, or for any less period during which he shall be entitled, equal in amount to the annual produce of the actual trust property at the time of his becoming entitled in possession, whether the same shall be the real property directed to be purchased, or any intermediate investment of the personal property directed to be invested in such purchase.

31. Where it shall be required to calculate, for the purposes either of this Act or of the Legacy Duty Acts, the value of any annuity, or of any interest chargeable with duty as an annuity, such value shall be calculated according to the tables in the schedule annexed to this Act, and not according to the tables in the schedule annexed to the Legacy Duty Act, 1796, and such annuity or interest shall be chargeable with duty accordingly.

32. The following provisions relating to the assessment and payment of duty on personal estate, and the exemption thereof from duty in certain cases, namely, the eighth, tenth, eleventh, twelfth, fourteenth, and twenty-third Sections of the Legacy Duty Act, 1796, shall be applicable to the personal property comprised in any succession, and to the assessment and payment of duty thereon, as if such personal property were a legacy bequeathed by the predecessor to the successor, and were subject to the said provisions, and as if the tables in the said Act referred to were the tables in the schedules annexed to this Act.

33. Where the donee of a general power of appointment shall become chargeable with duty in respect of the property appointed by him under such power, he shall be allowed to deduct from the duty so payable any duty he may have already paid in respect of any limited interest taken by him in such property.

34. In estimating the value of a succession no allowance shall be made in respect of any incumbrance thereon created or incurred by the successor, not made in execution of a prior special power of appointment, but an allowance shall be made in respect of all other incumbrances, and also in respect of any monies which the successor may previously to his possession have laid out in the substantial repairs or permanent improvement of real property comprised in his succession; provided that upon any successor becoming entitled to real property subject to any prior principal charge, an allowance shall be made to him in respect only of the yearly sums payable by way of interest or otherwise on such charge as reducing the annual value *pro tanto* of such real property.

35. In estimating the value of a succession no allowance shall be made in respect of any contingent incumbrance thereon; but in the event of such incumbrance taking effect as an actual burden on the interest of the successor, he shall be entitled to a return of a proportionate amount of the duty so paid by him in respect of the amount or value of the incumbrance when taking effect.

36. In estimating the value of a succession no allowance shall be made in respect of any contingency upon the happening of which the property may pass to some other person; but in the event of the same so passing the successor shall be entitled to a return of so much of the duty paid by him as will reduce the same to the amount which would have been payable by him if such duty had been assessed in respect of the actual duration or extent of his interest.

37. Where a successor shall not have obtained the whole of his succession at the time of the duty becoming payable, he shall be chargeable only with duty on the value of the property or benefit from time to time obtained by him ; and whenever any duty shall have been paid on account of any succession, and it shall afterwards be proved to the satisfaction of the commissioners that such duty, not being due from the person paying the same, was paid by mistake, or was paid in respect of property which the successor shall have been unable to recover, or from or of which he shall have been evicted or deprived by any superior title, or that for any other reason it ought to be refunded, the commissioners shall thereupon refund the same to the person entitled thereto.

38. Where any successor upon taking a succession shall be bound to relinquish or be deprived of any other property, the commissioners shall, upon the computation of the assessable value of his succession, make such allowance to him as may be just in respect of the value of such property.

And see Customs & Inland Revenue Act, 1889, *s.* 10 (1).

39. Where, in the opinion of the commissioners, any succession shall be of such a nature, or so disposed or circumstanced, that the value thereof shall not be fairly ascertainable under any of the preceding directions, or where, from the complication of circumstances affecting the value of a succession or affecting the assessment or recovery of the duty thereon, the commissioners shall think it expedient to exercise this present authority, it shall be lawful for them to compound the duty payable on the succession upon such terms as they shall think fit, and to give discharges to the successor upon payment of duty according to such composition ; and it shall be lawful for them, in any special cases in which they may think it expedient so to do, to enlarge the time for payment of any duty.

And see F. A. 1894, *s.* 13, *and F. A.* 1907, *s.* 13.

40. It shall be lawful for the commissioners to receive any duty tendered to them in advance, and to allow discount thereon at the rate of four pounds *per centum per annum*, or at such other rate as may from time to time be directed by the Treasury ; and no person, by reason of his having made any payment of duty in advance, shall be prejudiced in his right to have any repayment of duty made to him to which he may become entitled under any of the provisions of this Act.

41. It shall be lawful for the commissioners, in their discretion, upon application made by any person who shall be entitled to a succession in expectancy, to commute the duty presumptively payable in respect of such succession for a certain sum to be presently paid, and for assessing the amount which shall be so payable they shall cause a present value to be set upon such presumptive duty, regard being had to the contingencies affecting the liability to such duty, and the interest of money involved in such calculation being reckoned at the rate for the time being allowed by the commissioners in respect of duties paid in advance ; and upon the receipt of such certain sum they shall give discharges to the successor accordingly.

And see Customs & Inland Revenue Act, 1880, *s.* 11.

42. The duty imposed by this Act shall be a first charge on the interest of the successor, and of all persons claiming in his right, in all the real property in respect whereof such duty shall be assessed ; and such duty shall also be a first charge on the interest of the successor in the personal property in respect whereof the same shall be assessed, while the same shall remain in the ownership or control of the successor, or of any trustee for him, or of his guardian or committee, or tutor or curator, or of the husband of any wife who shall be the successor ; and the said duty shall be a debt due to the Crown from the successor, having, in the case of real property comprised in any succession, priority over all charges and

interests created by him, but such duty shall not charge or affect any other real property of the successor than the property comprised in such succession : provided, that where any settled real property comprised in a succession shall be subject to any power of sale, exchange, or partition, exercisable with the consent of the successor, or by the successor with the consent of another person, he shall not be disqualified by the charge of duty on his succession from effectually authorizing by his consent the exercise of such power, or exercising any power with proper consent, as the case may be, and in such case the duty shall be charged substitutively upon the successor's interest in all real property acquired in substitution for the real property before comprised in the succession, and in the meantime upon his interest also in all monies arising from the exercise of any such power, and in all investments of such monies.

And see Customs & Inland Revenue Act, 1889, *ss.* 12, 13 *and* 14.

43. The commissioners shall, at the request of any successor, or any person claiming in his right, accept or cause to be made so many separate assessments of the duty payable in respect of the interest of the successor in any separate properties, or in defined portions of the same property, as shall be reasonably required : and in such cases the respective properties shall be chargeable only with the amount of duty separately assessed in respect thereof ; and it shall be lawful also for the commissioners, by their certificates, to be issued in such form as they shall think fit, from time to time to declare that any duties already assessed, whether collectively or distributively, in respect of any succession, shall thenceforth be charged, as to any unpaid instalments, according to any further distribution thereof, upon separate parts only of the property in respect of which such assessment shall have been made, in which case the charge of such duties shall be thenceforth limited according to such further distribution.

44. The following persons, besides the successor, shall be personally accountable to her Majesty for the duty payable in respect of any succession, but to the extent only of the property or funds actually received or disposed of by them respectively after the time appointed for the commencement of this Act ; that is to say, every trustee, guardian, committee, tutor, or curator, or husband in whom respectively any property, or the management of any property, subject to such duty, shall be vested, and every person in whom the same shall be vested by alienation or other derivative title at the time of the succession becoming an interest in possession ; and all such trustees, guardians, committees, tutors, curators, husbands, and persons shall be authorised to compound or pay in advance or commute any duty, and retain out of the property subject to any such duty the amount thereof, or to raise such amount, and the expenses incident thereto, at interest on the security of such property, with power to give effectual discharges for the same, and such security shall have priority over any charge or incumbrance created by the successor ; and in the event of the non-payment of such duty as aforesaid every person hereby made accountable shall be a debtor to her Majesty in the amount of the unpaid duty for which he shall be so accountable.

And see Customs & Inland Revenue Act, 1889, *ss.* 12, 13, *and* 14.

45. The persons hereby made accountable for the payment of duty in respect of any succession, or some of them, shall, in the case of personal property, at the time of the first payment, delivery, retainer, satisfaction, or other discharge of the same or any part thereof to or for the successor or any person in his right, and in the case of real property when any duty in respect thereof shall first become payable, give notice to the commissioners or to their officers of their liability to such duty, and shall at the same time deliver to the commissioners or to their officers a full and true account of the property for the duty whereon they shall respectively be accountable, and of the value thereof, and of the deductions claimed by them, together with the names of the successor and predecessor, and their relation to each other, and all such other particulars as shall be necessary or proper

for enabling the commissioners fully and correctly to ascertain the duties due; and the commissioners, if satisfied with such account and estimate, as originally delivered, or with any amendments that may be made therein upon their requisition, may assess the succession duty on the footing of such account and estimate; but it shall be lawful for the commissioners, if dissatisfied with such account and estimate, to cause an account and estimate to be taken by any person or persons to be appointed by themselves for that purpose, and to assess the duty on the footing of such last-mentioned account and estimate, subject to appeal, as hereinafter provided; and if the duty so assessed shall exceed the duty assessable according to the return made to the commissioners, and with which they shall have been dissatisfied, and if there shall be no appeal against such assessment, then it shall be in the discretion of the commissioners, having regard to the merits of each case, to charge the whole or any part of the expenses incident to the taking of such last-mentioned account and estimate on the interest of the successor in respect whereof the duty shall be due, in increase of such duty, and to recover the same forthwith accordingly; and if there shall be an appeal against such last-mentioned assessment, then the payment of such expenses shall be in the discretion of the Court of Appeal hereinafter appointed.

And see Customs & Inland Revenue Act, 1889, *s.* 10 (3).

46. If any person required to give any such notice or deliver such account as aforesaid shall wilfully neglect to do so at the prescribed period, he shall be liable to pay to her Majesty a sum equal to ten pounds *per centum* upon the amount of duty payable by him, or in the case of a succession chargeable with a higher rate of duty than one pound *per centum* upon the value thereof, upon such less sum as such duty, if assessable at the rate of one pound *per centum* upon the value of the succession, would amount to, and a like penalty for every month after the first month during which such neglect shall continue; and if any person liable under this Act to pay any duty shall, after such duty shall have been finally ascertained, wilfully neglect to do so within twenty-one days, he shall also be liable to pay to her Majesty a sum equal to ten pounds *per centum* upon the amount of duty so unpaid, or upon such less sum as such duty, if assessable at the rate of one pound *per centum* on the value of the succession, would amount to, and a like penalty for every month after the first month during which such neglect shall continue.

47. If any accountable party required by the commissioners to deliver any such account as aforesaid shall make default in doing so, it shall be lawful for the commissioners to sue, out of her Majesty's Court of Exchequer in England, Scotland, or Ireland, as they shall think expedient, according to the circumstances of the case, and for such court to issue, a writ of summons in such form as the judges of such court shall from time to time frame, commanding the party so in default to deliver such account within such period as may be appointed in the writ, or to show cause to the contrary; and on cause being shown such order shall be made as shall be just.[1]

48. The commissioners shall for the purpose of the Legacy Duty Acts be empowered to require and enforce the delivery of accounts from executors, administrators, and trustees of property and legatees chargeable with duty under such Acts, and for the duty whereon they shall be accountable, in the same manner as they are by the last preceding section of this Act empowered to require and enforce the delivery of accounts for the purpose of this Act.[1]

49. Every person who under the provisions of this Act may deliver any account or estimate of the property comprised in any succession shall, if required by the commissioners, produce before them such books and documents in the custody or control of such person, so far as the same relate to such account or estimate,

[1] Sections 47 and 48 were repealed as to England by the Crown Suits, &c., Act, 1865, s. 53.

as may be capable of affording any necessary information for the purpose of ascertaining such property and the duty payable thereon, and the commissioners may, without payment of any fee, inspect and take copies of any public book; but all such information shall be deemed to be confidential, and the commissioners shall not disclose the same, or the contents of any document or book, to any person, otherwise than for the purposes of this Act.

50. It shall be lawful for any accountable party dissatisfied with the assessment of the commissioners, upon giving, within twenty-one days after the date of such assessment, notice in writing to the commissioners of his intention to appeal against such assessment, and a statement of the grounds of such appeal, such statement to be furnished within the further period of thirty days, to appeal by petition accordingly to her Majesty's Court of Exchequer in England, Scotland, or Ireland, according to the place in which the appellant shall be resident; and every such court, or any judge thereof sitting in chambers, shall have jurisdiction to hear and determine the matter of such appeal and the costs thereof, with power to direct, for the purposes of such appeal, any inquiry, valuation, or report to be made by any officer of the court, or other person, as such court or judge may think fit[1]: Provided, that where the sum in dispute in respect of duty on such assessment does not exceed fifty pounds, the accountable party may, having given notice of appeal and delivered a statement of the grounds thereof as hereinbefore directed, appeal to the judge of the County Court in England, the Sheriff Court in Scotland, or the Assistant Barrister's Court in Ireland, for the district, county, or division in which the appellant shall be resident, or the property be situate; and every such judge shall have jurisdiction to hear and determine the matter of such last-mentioned appeal, with the like power and authority as are by this section given to a judge of her Majesty's Court of Exchequer.

51. Whenever any payment of duty shall be made under this Act, the same shall be entered in a book to be kept by the commissioners for this purpose, and the Receiver General of Inland Revenue, or other proper officer appointed by the commissioners, shall give a receipt for the same in such form as they shall think fit, and stamped, with the proper stamp for denoting the rate of duty, and the commissioners shall from time to time deliver to any person interested in any property affected by such duty, on applying for the same for any reasonable purpose approved by the commissioners, a certificate, in such form as they may think fit, of such payment.

52. Every receipt and certificate purporting to be in discharge of the whole duty payable for the time being in respect of any succession or any part thereof shall exonerate a *bonâ fide* purchaser for valuable consideration, and without notice, from such duty, notwithstanding any suppression or mis-statement in the account upon the footing whereof the same may have been assessed, or any insufficiency of such assessment; and no *bonâ fide* purchaser of property for valuable consideration under a title not appearing to confer a succession shall be subject to any duty with which such property may be chargeable under the provisions of this Act, by reason of any extrinsic circumstances of which he shall not have had notice at the time of such purchase.

53. Whenever any suit shall be pending in any court for the administration of any property chargeable with duty under this Act or the Legacy Duty Acts, such court shall provide, out of any property which may be in the possession or control of the court, for the payment of duty to the commissioners.

54. This Act shall be taken to have come into operation on the nineteenth day of May one thousand eight hundred and fifty-three, and shall take effect accordingly.

55. This Act may be cited for all purposes as "The Succession Duty Act, 1853."

[1] *And see* Crown Suits, &c., Act, 1865.

THE SCHEDULE TO WHICH THIS ACT REFERS.

TABLE 1.

The Values of an Annuity of £100 per Annum held on a single Life.

Years of Age.	Values.			Years of Age.	Values.		
	£	*s.*	*d.*		£	*s.*	*d.*
Birth	1,892	8	6	48	1,300	9	6
1	1,906	13	0	49	1,271	19	6
2	1,919	2	0	50	1,242	19	6
3	1,926	8	0	51	1,213	17	0
4	1,928	16	0	52	1,185	14	0
5	1,926	19	6	53	1,157	17	6
6	1,921	12	0	54	1,130	13	0
7	1,913	4	6	55	1,103	18	0
8	1,902	16	6	56	1,077	10	0
9	1,890	19	6	57	1,051	10	0
10	1,878	3	0	58	1,025	10	0
11	1,864	7	0	59	999	1	0
12	1,849	12	0	60	972	1	0
13	1,833	18	6	61	943	15	6
14	1,817	7	6	62	914	2	0
15	1,800	8	6	63	883	6	0
16	1,783	13	0	64	852	9	0
17	1,767	16	0	65	821	12	6
18	1,753	5	6	66	790	15	0
19	1,740	11	0	67	761	19	0
20	1,729	9	6	68	733	8	6
21	1,719	17	0	69	705	4	0
22	1,713	1	0	70	677	9	0
23	1,706	16	6	71	650	8	0
24	1,700	11	6	72	623	19	6
25	1,694	0	0	73	597	7	6
26	1,686	14	6	74	569	13	0
27	1,677	5	6	75	541	0	6
28	1,667	1	0	76	511	9	6
29	1,656	1	0	77	477	17	0
30	1,644	7	6	78	444	9	6
31	1,632	0	0	79	412	9	6
32	1,619	0	6	80	381	3	0
33	1,605	4	0	81	350	14	6
34	1,590	9	6	82	321	14	6
35	1,574	17	6	83	292	10	0
36	1,558	9	6	84	263	2	0
37	1,541	10	6	85	234	18	6
38	1,524	0	0	86	207	16	0
39	1,506	1	6	87	184	11	6
40	1,487	10	0	88	164	17	6
41	1,468	4	0	89	148	7	0
42	1,447	11	6	90	133	9	0
43	1,426	2	0	91	122	16	0
44	1,403	10	0	92	107	7	0
45	1,379	14	6	93	93	3	0
46	1,354	16	6	94	79	8	6
47	1,328	2	6	95	64	11	0

TABLE II.

Tables for valuing Annuities held on Joint Lives.

TABLE III.

Table for valuing Annuities for years certain.

THE REVENUE ACT, 1862.

[25 & 26 Victoria, Chapter 22.]

[3rd June, 1862.

39. For the purpose of the stamp duties or probates of wills and letters of administration, debts and sums of money due and owing from persons in the United Kingdom, to any deceased person at the time of his death on obligation or other speciality, shall be estate and effects of the deceased, within the jurisdiction of Her Majesty's Court of Probate in England or Ireland, as the case may be, in which the same would be if they were debts owing to the deceased upon simple contract without regard to the place where the obligation or speciality shall be at the time of the death of the deceased.

THE REVENUE (No. 2) ACT, 1864.

[27 & 28 Victoria, Chapter 56.]

[25th July, 1865.

4. . . . Be it enacted, that the said stamp duties shall be charged and paid in respect of the value of any ship or any share of a ship belonging to any deceased person which shall be registered at any port in the United Kingdom[1], notwithstanding such ship at the time of the death of the testator or intestate may have been at sea or elsewhere out of the United Kingdom[1]; and for the purpose of charging the said duties such ship shall be deemed to have been at the time aforesaid in the port at which she may be registered.

5. No stamp duty shall be chargable on any such probate, letters of administration, or inventory as aforesaid in any case where the whole estate and effects of the deceased person dying after the passing of this Act (exclusive of what he shall have been possessed of or entitled to as a trustee for other person or persons, and not beneficially), shall be sworn not to exceed and shall not actually exceed in value the sum of one hundred pounds.

CROWN SUITS &c. ACT, 1865.

[28 & 29 Victoria, Chapter 104.]

[5th July, 1865.

55. If any person accountable for or chargeable with duty under the Succession Duty Act or the Legacy Duty Acts, required by the Commissioners of Inland Revenue to deliver an account under those Acts or any of them, makes default in doing so, the Commissioners may sue out of the Court of Exchequer a writ of summons commanding him to deliver an account and to pay the duty and the costs of the proceedings, or to show cause to the contrary; and on cause being shown such order shall be made as seems just.

---

[1] See footnote to F. A. 1894, s. 2 (2).

56. Where in pursuance of the Succession Duty Act or the Legacy Duty Acts, the Commissioners of Inland Revenue make an assessment of duty, and the duty is not paid, and there is no notice of appeal against the assessment under Section 50 of the Succession Duty Act, or of disputing the liability to assessment, the Commissioners may sue out of the Court of Exchequer a writ of summons commanding the person liable for the duty, or the owner of any property expressly charged therewith, to pay the duty payable by him and the cost of the proceedings, or to show cause to the contrary; and on cause being shown such order shall be made as seems just.

57. If any person takes possession of and in any manner administers any part of the personal estate of any person deceased without obtaining probate of his will or letters of administration of his estate within six months after his decease, or within two months after the termination of any suit or dispute respecting the will or the right to letters of adminstration, if there is any such suit or dispute that is not ended within four months after the death, the Commissioners of Inland Revenue may sue out of the Court of Exchequer a writ of summons commanding the person so taking possession and administering as aforesaid to deliver to the Commissioners an account of the estate of the deceased and of its value, and to pay such duty as would have been payable if probate or administration had been obtained, and the costs of the proceedings, or to show cause to the contrary; and on cause being shown such order shall be made as seems just; and any such proceedings shall be a waiver of all penalties incurred in the premises by such person as aforesaid.

INLAND REVENUE ACT, 1868.

[31 & 32 Victoria, Chapter 124.]

[31st July, 1868.

9.[1] . . . in any case in which duty payable in respect of any legacy or residue under the Legacy Duty Acts now in force, or in respect of any succession under the Succession Duty Act, 1853, is or shall be in arrear, the person by whom the arrears of duty may be payable shall be liable to pay interest thereon, [at the rate of four pounds per centum per annum; and such interest shall be recoverable by the commissioners of inland revenue in the same manner as the arrears of duty, and as part thereof]. Provided always, that the acceptance or recovery by the said commissioners of arrears of duty, with interest thereon as aforesaid, shall be an absolute waiver of the penalties (if any) which may have been incurred under the Legacy Duty Acts or the Succession Duty Act.

CUSTOMS AND INLAND REVENUE ACT, 1880.

[43 Victoria, Chapter 14.]

[24th March, 1880.

11. Where any legacy duty or succession duty shall be presumptively payable in respect of any interest in expectancy upon the determination of a life or other temporary interest in possession in a legacy, or residue, or in personal property comprised in a succession, and the duty (if any) payable upon the life or other

[1] The words in square brackets were repealed by F.A. 1896, s. 40, and s. 18 of that Act reduced the rate of interest on all Death Duties to 3 per cent., but by s. 30, F.A. 1919, the rate of interest was again fixed at 4 per cent.

temporary interest shall have been fully paid and satisfied, it shall be lawful for the Commissioners of Inland Revenue, in their discretion, upon the application of the executor or trustee or other person who would be accountable for the duty in respect of such interest in expectancy, if it were then in possession, to commute the duty presumptively payable for a certain sum to be presently paid.

For assessing the amount which shall be so payable the commissioners shall cause a present value to be set upon the presumptive duty, regard being had to any contingencies affecting the liability to such duty, and the interest of money involved in the calculation being reckoned at the rate for the time being allowed by the commissioners in respect of duties paid in advance under the Succession Duty Act 1853.

Upon the receipt of the certain sum the commissioners shall give a discharge for the duty accordingly.

12. When an executor, administrator, or trustee shall have given notice in writing to the Commissioners of Inland Revenue for any claim to legacy duty or succession duty in respect of any fund in his hands which he intends to distribute, and shall have delivered to the commissioners all particulars which they may require in order to ascertain the existence and extent of any such claim, he shall be at liberty to distribute the fund amongst the parties entitled thereto, after satisfaction of any claims to duty made by the commissioners, and shall be entitled to receive from them a certificate discharging him from his liability to any duty in respect of the fund.

Such certificate shall not in any way affect the liability of any person other than the person in whose favour it is expressed to be given.

13. Where it appears upon an examination of the account rendered to the Commissioners of Inland Revenue that the value of the whole of the personal estate of any person dying after the passing of this Act does not amount to the sum of one hundred pounds, no legacy duty shall be charged in respect thereof or of any portion thereof.

CUSTOMS AND INLAND REVENUE ACT, 1881.

[44 & 45 Victoria, Chapter 12.]

[3rd June, 1881.

37. It shall be lawful for the Commissioners of Inland Revenue at any time and from time to time within three years after the grant of probate or letters of administration or recording of inventory, as they may think necessary, to require the person acting in the administration of the estate and effects of any deceased person, to furnish such explanations, and to produce such documentary or other evidence respecting the contents of, or particulars verified by, the affidavit or inventory as the case may seem to them to require.

38. (1) Stamp duties at the like rates as are by this Act charged on affidavits and inventories shall be charged and paid on accounts delivered of the personal or moveable property to be included therein according to the value thereof.

(2) The personal or moveable property to be included in an account shall be property of the following descriptions, viz. :—

(*a*) Any property taken as a *donatio mortis causa* made by any person dying on or after the first day of June one thousand eight hundred

and eighty-one, or taken under a voluntary disposition, made by any person so dying, purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust or otherwise, which shall not have been *bonâ fide* made three months before the death of the deceased.

(*b*) Any property which a person dying on or after such day having been absolutely entitled thereto, has voluntarily caused or may voluntarily cause to be transferred to or vested in himself and any other person jointly whether by disposition or otherwise, so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person.

(*c*) Any property passing under any past or future voluntary settlement made by any person dying on or after such day by deed or any other instrument not taking effect as a will, whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor or whereby the settlor may have reserved to himself the right, by the exercise of any power, to restore to himself, or to reclaim the absolute interest in such property.

(3) *This sub-section provided for repayment of the Stamp Duty paid on any voluntary settlement coming within Section* 38, *but was repealed by s.* 11 (2) *Customs and Inland Revenue Act,* 1889.

And see Customs and Inland Revenue Act, 1889, *s.* 11, *and F. A.* 1894, *s.* 2 (1) (c), *and F. A.* 1910, *s.* 59.

41. In respect of any legacy, residue, or share of residue payable, out of, or consisting of any estate or effects according to the value whereof duty shall have been paid on the affidavit or inventory or account in conformity with this Act, the duty at the rate of one pound per centum imposed by the Stamp Act, 1815, shall not be payable;

And in respect of any succession to property according to the value whereof duty shall have been paid on the affidavit or inventory or account in conformity with this Act, the duty at the rate of one pound per centum imposed by the Succession Duty Act, 1853, shall not be payable.

42. Subject to the relief from legacy duty given by section thirteen of the Customs and Inland Revenue Act, 1880, every pecuniary legacy or residue of share of residue under the will or the intestacy of a person dying on or after the first day of June one thousand eight hundred and eighty-one, although not of an amount or value of twenty pounds, shall be chargeable to the duties imposed by the Stamp Act, 1815, as modified by this Act.

43 It shall be lawful for the Commissioners of Inland Revenue, upon the application of the person acting in the execution of the will of any deceased person, and upon the delivery to them of an account showing the amount of the estate and effects in respect whereof legacy duty is payable, together with the names or description of class of the persons entitled thereto and every part thereof, in possession or expectancy, and their degrees of consanguinity to the testator, to assess the duty upon the amount shown by the said account at such a sum by way of composition as, having regard to the circumstances, shall appear to be proper, and to accept payment of the duty so assessed in full discharge of all claims for legacy duty under such will.

If the Commissioners are of opinion that an application should receive the assent of any person, they shall refuse to entertain the application until such assent shall have been given.

THE REVENUE ACT, 1884.

[47 & 48 Victoria, Chapter 62.]

[14th August, 1884.

1. This Act may be cited as the Revenue Act, 1884.

11. Notwithstanding any provision to the contrary contained in any local or private Act of Parliament, the production of a grant of representation from a court in the United Kingdom by probate or letters of administration or confirmation shall be necessary to establish the right to recover or receive any part of the personal estate and effects of any deceased person situated in the United Kingdom. [Provided that where a policy of life assurance has been effected with any insurance company by a person who shall die domiciled elsewhere than in the United Kingdom, the production of a grant of representation from a Court in the United Kingdom, shall not be necessary to establish the right to receive the money payable in respect of such policy.][1]

CUSTOMS AND INLAND REVENUE ACT, 1888.

[51 & 52 Victoria, Chapter 8.]

[16th May, 1888.

21. (1) In addition to the duties chargeable in respect of successions under section ten of the Succession Duty Act, 1853, there shall be levied and paid to her Majesty in respect of every succession therein referred to, upon the death of any person dying on or after the first day of July one thousand eight hundred and eighty-eight, according to the value thereof, the following duties (that is to say) :—

Where the successor shall be the lineal issue or lineal ancestor of the predecessor, a duty at the rate of ten shillings per centum upon the value of the interest of the successor;

In all other cases mentioned in such section, a duty at the rate of one pound ten shillings per centum upon the value of the interest of the successor.

Provided that additional duty under this Act shall not be payable upon the interest of a successor in leaseholds passing to him by will or devolution by law, or in property included in an account according to the value whereof duty is payable under the Customs and Inland Revenue Act, 1881.

(2) The duties chargeable under the Acts now in force for charging duties on legacies and shares of the personal estates of deceased persons shall not be levied and paid under such Acts in respect of any legacy payable or having effect or being satisfied out of or charged or rendered a burden upon the real or heritable estate

---

[1] The words in square brackets were substituted for the original proviso by Revenue Act. 1889, s. 19.

of any person dying on or after the first day of July one thousand eight hundred and eighty-eight, or any real or heritable estate, or the rents or profits thereof, which such person shall have had any right or power to charge, burden, or affect with the payment of money, or out of or upon any moneys to arise from the sale, mortgage, or other disposition of any such real or heritable estate, or any part thereof, but the duties under the Succession Duty Act, 1853, and the additional duties under this Act shall be levied and paid in respect of every such legacy (whether given by way of annuity or in any other form) as a succession to personal property.

And see F. A. 1894, *Sections* 1 *&* 5 (2), 1*st Schedule.*

22. (1) The duty chargeable on the interest of a successor in real property, considered as an annuity in conformity with section twenty-one of the Succession Duty Act, 1853, shall, where the successor has become entitled to his succession upon the death of any person dying on or after the first day of July one thousand eight hundred and eighty-eight, be paid as follows :—

(*a*) by eight equal half-yearly instalments, according to the provisions of the said section ; or, at the option of the successor.

(*b*) by two equal moieties, whereof the first moiety shall be paid by four equal yearly instalments the first of such instalments to be paid at the expiration of twelve months next after the successor shall have become entitled to the beneficial enjoyment of the real property in respect whereof the same shall be payable, and the three following instalments at yearly intervals to be computed from the day on which the first instalment shall have become payable ; and the second moiety shall be paid on the day for payment of the last instalment of the first moiety, or, if not so paid, shall be payable by four equal yearly instalments, with interest at the rate of four pounds per centum per annum from such last-mentioned day on so much of the second moiety as shall for the time being remain unpaid, the first of such instalments, with the interest, to be paid at the expiration of twelve months from that day.

(2) In the event of a successor availing himself of the option given to him by this section, he shall be entitled to tender the duty in advance, and receive discount thereon at such rate and subject to such regulations in all respects as the Treasury may prescribe.

(3) In the event of the successor availing himself of the option given to him by this section, and dying before all the duty with the interest (if any) shall have been fully paid, then the unpaid part of the duty with the interest (if any) shall—

(*a*) where the successor shall have been competent to dispose by will of a continuing interest in such property, be a continuing charge on such interest, in exoneration of his other property, and shall be payable by the owner for the time being of such interest ; and

(*b*) where the successor shall not have been so competent, be a debt due to her Majesty, and payable out of his estate, either in advance under the provision in this section in that behalf, or at the same time or times and in the same manner as the amount unpaid would have been payable by him if he had not died ; provided that if the death of the successor shall have happened before the day for payment of the last instalment of the first moiety of duty, the debt shall be reduced by so much as would have ceased to be payable if the duty had been payable by eight half-yearly instalments under section twenty-one of the Succession Duty Act, 1853.

CUSTOMS AND INLAND REVENUE ACT, 1889.

[52 & 53 Victoria, Chapter 7.]

[31st May, 1889.

Sections 5 to 9 inclusive imposed a temporary Estate Duty at 1 per cent. on property exceeding £10,000 ; as to which see F. A. 1894, Section 1 (First Schedule).

Amendments of Law as to Succession Duties and Duties on Accounts.

10. (1) The allowance under section thirty-eight of the Succession Duty Act, 1853, to a successor upon taking a succession upon the death of any person dying on or after the first day of June one thousand eight hundred and eighty-nine, shall only be made in respect of the value of property which the successor may have acquired by any title not conferring a succession on him, and which passes from the successor to some other person.

(2) Subject to the relief given by section eighteen of the Succession Duty Act, 1853, in respect of property not amounting in money or principal value to the sum of one hundred pounds, the duties charged under the said Act, and section twenty-one of the Customs and Inland Revenue Act, 1888, shall be payable upon a succession upon the death of any person dying on or after the first day of June one thousand eight hundred and eighty-nine, although the value thereof shall be less than twenty pounds.

(3) The Commissioners of Inland Revenue, if dissatisfied with the account and estimate originally delivered in conformity with section forty-five of the Succession Duty Act, 1853, may, subject to appeal as therein provided assess the duty on the footing of such account and upon such estimate as they may place hereon, or proceed according to the directions of that section.

11. (1) Sub-section two of section thirty-eight of the Customs and Inland Revenue Act, 1881, is hereby amended, as follows :—

The description of property marked (*a*) shall be read as if the word "twelve" were substituted for the word "three" therein, and the said description of property shall include property taken under any gift, whenever made, of which property *bonâ fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained, to the entire exclusion of the donor, or of any benefit to him by contract or otherwise :

The description of property marked (*b*) shall be construed as if the expression "to be transferred to or vested in himself and any other "person" included also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone, or in concert, or by arrangement, with any other person :

The description of property marked (*c*) shall be construed as if the expression "voluntary settlement" included any trust, whether expressed in writing or otherwise, in favour of a volunteer, and, if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person, and as if the expression "such property," wherever the same occurs, included the proceeds of sale thereof :

The charge under the said section shall extend to money received under a policy of assurance effected by any person dying on or after the

first day of June one thousand eight hundred and eighty-nine, on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit.

And see F. A. 1894, *s.* 2 (1) (c), *and F. A.* 1910, *s.* 59.

(2) A return of stamp duty shall not be made under sub-section three of the said section thirty-eight by reason of, or in relation to, any account delivered on or after the first day of June one thousand eight hundred and eighty-nine.

Limitation of Claims to Succession Duty or Legacy Duty in certain Cases.[1]

12. (1) Notwithstanding the forty-second section of the Succession Duty Act, 1853, or any other provision contained in that Act, real property, or any estate or interest therein, shall not, as against a purchaser for valuable consideration, or a mortgagee, remain charged with or liable to payment of any sum for succession duty or duty hereinbefore imposed by this part of this Act, after the expiration of six years from the date of notice to the Commissioners of Inland Revenue of the fact that the successor, or any person in his right or on his behalf, has become entitled in possession to his succession or to the receipt of the income and profits thereof, or from the date of the first payment by such successor or person of any instalment or part of the duty, in case the successor shall not have availed himself of the option given to him by section twenty-two of the Customs and Inland Revenue Act, 1888, or after two years from the time for the payment by such successor of the last instalment or part of the duty, if he has availed himself of such option ; or, in the absence of any such notice or payment, after the expiration of twelve years from the happening of the event (whether before or after the passing of this Act) which gave rise to an immediate claim to such duty, or if such period of twelve years expires within six years from the date of the passing of this Act, then after the expiration of six years from the last-mentioned date.

(2) The duty (if any) unpaid at the expiration of such period of six years, or of twelve years or six years as the case may be, shall be payable and paid by the successor or the persons mentioned as accountable in section forty-four of the said Act, other than the purchaser or mortgagee, and shall become charged substitutively upon any other estate or interest comprised in the succession of the successor remaining vested in him, or in any person in his right or on his behalf, other than the purchaser or mortgagee, and in case of a mortgage upon the equity of redemption.

(3) This section is not to lessen or affect any liability of any successor or accountable person, other than the purchaser or mortgagee, to payment of duty, whether out of money received on any sale or mortgage, or otherwise ; but a purchaser or mortgagee shall not, for the purpose of obtaining the exemption conferred by this section, be bound to see that the duty is discharged out of the money or other consideration paid or given as the consideration for the sale or mortgage.

13. (1) Any person may cause an attested copy (which shall be exempt from stamp duty) of any document which creates a liability for payment of any succession duty, or duty hereinbefore imposed by this part of this Act, other than a testamentary document admitted to probate, to be deposited with the Commissioners of Inland Revenue at their principal office in London, Edinburgh, or Dublin, as the case may require, and such copy shall be received at that office.

[1] Sections 12-14 were applied to Estate Duty by F.A. 1894, s. 8 (2).

(2) The officer of the Commissioners receiving the copy shall, on request of the person making the deposit, and either by indorsement on the original document or otherwise, give a receipt in writing under his hand for the copy.

(3) After a receipt has been given by an officer for a copy of a document under this section, no person shall be liable for payment of any duty under such document after the expiration of six years from the date of notice to the Commissioners of the fact which gives rise to an immediate claim to such duty.

(4) The costs of depositing a copy of a document and obtaining a receipt under this section shall be deemed costs duly incurred by a trustee, executor, or administrator, or any other person in the execution of his duties as trustee, executor, or administrator, or otherwise, under the document.

14. No person shall, under a testamentary document admitted to probate, or under letters of administration, or under a confirmation, be liable for payment of any legacy duty or succession duty, or duty hereinbefore imposed by this part of this Act, after the expiration of six years from the date of the settlement of the account in respect of which the duty is payable, where such account was in all respects a full and true account and contained all the facts material to be known by the Commissioners of Inland Revenue for the ascertainment of the rate and amount of duty; and no trustee, executor, or administrator shall, after the expiration of such six years, be liable to such duty if it is proved to the satisfaction of the Commissioners that the account rendered was correct to the best of his knowledge, information, and belief.

15. Every notice referred to in this part of this Act shall be in writing and in such form as the Commissioners of Inland Revenue shall prescribe, and shall be delivered or sent in duplicate, and an acknowledgment of the receipt thereof, by or on behalf of the Commissioners, upon the duplicate shall be forthwith returned to the person by whom the notice was delivered or sent.

INLAND REVENUE REGULATION ACT, 1890.

[53 & 54 Victoria, Chapter 21.]

[25th July, 1890.

This Act, as amended by the Public Accounts and Charges Act, 1891, 54 & 55 *Vict.*, *c.* 24, *provides for recovery of duty.*

STAMP DUTIES MANAGEMENT ACT, 1891.

[54 & 55 Victoria, Chapter 38.]

[21st July, 1891.

2. (1) Every person who, having received any sum of money as or for any duty, or any fee collected by means of a stamp does not apply the money to the due payment of the duty or fee, and improperly withholds or detains the same, shall be accountable for the amount of the duty or fee, and the same shall be a debt from him to Her Majesty and recoverable as such accordingly.

(2) The Commissioners may sue out of the High Court in England or Ireland, or of the Court of Session sitting as the Court of Exchequer in Scotland, as the case may require, a writ of summons commanding any such person to deliver an account of every sum of money so received by him, and withheld or detained, and to pay the money to them, together with the costs of the proceedings, or to show cause to the contrary.

(3) If cause is shewn the Court shall make such order as to the Court seems just.

FINANCE ACT, 1894.

[57 & 58 Victoria, Chapter 30.]

PART I. [31st July, 1894.

Estate Duty.

Grant of Estate Duty.

1. In the case of every person dying after the commencement of this part of this Act, there shall, save as hereinafter expressly provided, be levied and paid, upon the principal value ascertained as hereinafter provided of all property, real or personal, settled or not settled, which passes on the death of such person a duty, called "Estate duty," at the graduated rates hereinafter mentioned, and the existing duties mentioned in the First Schedule to this Act shall not be levied in respect of property chargeable with such Estate duty.

2. (1) Property passing on the death of the deceased shall be deemed to include the property following, that is to say:—

(*a*) Property of which the deceased was at the time of his death competent to dispose;

(*b*) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest; but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole;

(*c*) Property which would be required on the death of the deceased, to be included in an account under section thirty-eight of the Customs and Inland Revenue Act, 1881, as amended by section eleven of the Customs and Inland Revenue Act, 1889, if those sections were herein enacted and extended to real property as well as personal property, and the words "voluntary" and "voluntarily" and a reference to a "volunteer" were omitted therefrom; and

And see F. A. 1910, *s.* 59.

(*d*) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

(2) Property passing on the death of the deceased when situate out of the United Kingdom[1] shall be included only, if, under the law in force before the passing of this Act, legacy or succession duty is payable in respect thereof, or would be so payable but for the relationship of the person to whom it passes.[2]

(3) Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person, under a disposition not made by the deceased, or under a disposition made by the deceased more than twelve months before his death where possession and enjoyment of the property was *bonâ fide* assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise.[3]

3. (1) Estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a *bonâ fide* purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any

[1] For adaptation of the expression "the United Kingdom" resulting on the Government of Ireland Act, 1920, and the Irish Free State (Consequential Provisions) Act, 1922, see (i) Art. 14 (3) of the Government of Ireland (Adaptation of the Taxing Acts) Order, 1922 (S.R. & O., 1922, No. 80); and (ii) Art. 2 of the Irish Free State (Consequential Adaptation of Enactments) Order (S.R. & O., 1923, No. 405).

[2] *See* F. A. 1923, s. 37.

[3] *See* F. A. 1910, s. 59.

annuity for lives, where such purchase was made, or such lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee.

(2) Where any such purchase was made, or lease or annuity granted, for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of Estate duty.

4.[1] For determining the rate of Estate duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which Estate duty is leviable shall be aggregated so as to form one estate, and the duty shall be levied at the proper graduated rate on the principal value thereof :

Provided that any property so passing, in which the deceased never had an interest, [or which under a disposition not made by the deceased passes immediately on the death of the deceased to some person other than the wife or husband or a lineal ancestor or lineal descendant of the deceased,] shall not be aggregated with any other property but shall be an estate by itself, and the Estate duty shall be levied at the proper graduated rate on the principal value thereof ; [but if any benefit under a disposition not made by the deceased is reserved or given to the wife or husband or a lineal ancestor or lineal descendant of the deceased, such benefit shall be aggregated with property of the deceased for the purpose of determining the rate of Estate duty.]

And see F. A. 1900, *s.* 12. *F. A.* 1907, s. 16, *and F. A.* 1927, s. 51.

5.[2] [(1) Where property in respect of which Estate duty is leviable, is settled by the will of the deceased, or having been settled by some other disposition passes under that disposition on the death of the deceased to some person not competent to dispose of the property :—

(*a*) a further Estate duty (called settlement Estate duty) on the principal value of the settled property shall be levied at the rate hereinafter specified, except where the only life interest in the property after the death of the deceased is that of a wife or husband of the deceased ; but

(*b*) during the continuance of the settlement the settlement Estate duty shall not be payable more than once.]

(2) If Estate duty has already been paid in respect of any settled property since the date of the settlement, the Estate duty shall not, nor shall any of the duties mentioned in the fifth paragraph of the First Schedule to this Act, be payable in respect thereof, until the death of a person who was at the time of his death or had been at any time during the continuance of the settlement competent to dispose of such property.

And see F. A. 1898, s. 13, *F. A.* 1910, *s.* 55, *and F. A.* 1914, *s.* 14.

(3) In the case of settled property where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death.

[(4) Any person paying the settlement Estate duty payable under this section upon property comprised in a settlement, may deduct the amount of the *ad valorem* stamp duty (if any) charged on the settlement in respect of that property.]

---

[1] The words in square brackets were repealed by F.A. 1900, s. 18, as to persons dying on or after 9th April, 1900.

[2] Sub-ss. (1) and (4) were wholly repealed by F. A. 1914, ss. 14 and 18 (1).

(5) Where any lands or chattels are so settled, whether by Act of Parliament or royal grant, that no one of the persons successively in possession thereof is capable of alienating the same, whether his interest is in law a tenancy for life or a tenancy in tail, the provisions of this Act with respect to settled property shall not apply, and the property passing on the death of any person in possession of the lands and chattels shall be the interest of his successor in the lands and chattels, and such interest shall be valued, for the purpose of Estate duty, in like manner as for the purpose of succession duty.

And see F. A. 1922, *s.* 44.

Collection and Recovery of Duty and Value of Property.

6. (1) Estate duty shall be a stamp duty, collected and recovered as hereinafter mentioned.

(2) The executor of the deceased shall pay the Estate duty in respect of all personal property (wheresoever situate) of which the deceased was competent to dispose at his death, on delivering the Inland Revenue affidavit, and may pay in like manner the Estate duty in respect of any other property passing on such death, which by virtue of any testamentary disposition of the deceased is under the control of the executor, or, in the case of property not under his control, if the persons accountable for the duty in respect thereof request him to make such payment.

(3) Where the executor does not know the amount or value of any property which has passed on the death, he may state in the Inland Revenue affidavit that such property exists, but he does not know the amount or value thereof, and that he undertakes, as soon as the amount and value are ascertained, to bring in an account thereof, and to pay both the duty for which he is or may be liable, and any further duty payable by reason thereof for which he is or may be liable in respect of the other property mentioned in the affidavit.

(4) Estate duty, so far as not paid by the executor, shall be collected upon an account setting forth the particulars of the property, and delivered to the Commissioners within six months after the death by the person accountable for the duty, or within such further time as the Commissioners may allow.

(5) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased.

(6) Interest [at the rate of three per cent. per annum][1] on the Estate duty shall be paid from the date of the death up to the date of the delivery of the Inland Revenue affidavit or account, or the expiration of six months after the death, whichever first happens, [and shall form part of the Estate Duty.][1]

(7) The duty which is to be collected upon an Inland Revenue affidavit or account shall be due on the delivery thereof, or on the expiration of six months from the death, whichever first happens.

(8) Provided that the duty due upon an account of real property may, at the option of the person delivering the account, be paid by eight equal yearly instalments, or sixteen half-yearly instalments, with interest at the rate of three per cent. per annum from the date at which the first instalment is due, [less income tax,][1] and the first instalment shall be due at the expiration of twelve months from the death, and the interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly; but the duty for the time being unpaid, with such interest to the date of payment, may be paid at any time, and in case the property is sold, shall be paid on completion of the sale, and if not so paid shall be duty in arrear.

7. (1) In determining the value of an estate for the purpose of Estate Duty allowance shall be made for reasonable funeral expenses and for debts and incumbrances; but an allowance shall not be made—

(*a*) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances

[1] The words in square brackets were repealed by F.A. 1896, s. 4. Under F.A. 1919, s. 30, the rate of interest is now 4 per cent.

were incurred or created *bonâ fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, nor

(*b*) for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained, nor

(*c*) more than once for the same debt or incumbrance charged upon different portions of the estate;

and any debt or incumbrance for which an allowance is made shall be deducted from the value of the land or other subjects of property liable thereto.

Extended by F. A. 1910, *s.* 57.

(2) An allowance shall not be made in the first instance for debts due from the deceased to persons resident out of the United Kingdom[1] (unless contracted to be paid in the United Kingdom,[1] or charged on property situate within the United Kingdom[1]), except out of the value of any personal property of the deceased situate out of the United Kingdom[1] in respect of which Estate Duty is paid; and there shall be no repayment of Estate Duty in respect of any such debts, except to the extent which it is shown to the satisfaction of the Commissioners, that the personal property of the deceased situate in the foreign country or British Possession in which the person to whom such debts are due resides, is insufficient for their payment.

(3) Where the Commissioners are satisfied that any additional expense in administering or in realising property has been incurred by reason of the property being situate out of the United Kingdom,[1] they may make an allowance from the value of the property on account of such expense not exceeding in any case five per cent. on the value of the property.

(4) Where any property passing on the death of the deceased is situate in a foreign country, and the Commissioners are satisfied that by reason of such death any duty is payable in that foreign country in respect of that property, they shall make an allowance of the amount of that duty from the value of the property.

(5) The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market at the time of the death of the deceased;

And see F. A. 1910, *s.* 60 (2), *and F. A.* 1911, *s.* 18.

Provided that, in the case of any agricultural property, where no part of the principal value is due to the expectation of an increased income from such property, the principal value shall not exceed twenty-five times the annual value as assessed under Schedule A of the Income Tax Acts, after making such deductions as have not been allowed in that assessment and are allowed under the Succession Duty Act, 1853, and making a deduction for expenses of management not exceeding five per cent. of the annual value so assessed.

And see F. A. 1910, *ss.* 60 (1) *and* 61 (1).

(6) Where an estate includes an interest in expectancy, Estate duty in respect of that interest shall be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate or when the interest falls into possession, and if the duty is not paid with the Estate duty in respect of the rest of the estate, then—

(*a*) for the purpose of determining the rate of Estate duty in respect of the rest of the estate the value of the interest shall be its value at the date of the death of the deceased; and

(*b*) the rate of Estate duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession, together with the value of the rest of the estate as previously ascertained.

[1] *See* footnote to F. A. 1894, s. 2 (2).

(7) The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

(*a*) if the interest extended to the whole income of the property, be the principal value of that property; and

(*b*) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

(8) Subject to the provisions of this Act, the value of any property for the purpose of Estate duty shall be ascertained by the Commissioners in such manner and by such means as they think fit, and, if they authorise a person to inspect any property and report to them the value thereof for the purposes of this Act, the person having the custody or possession of that property shall permit the person so authorised to inspect it at such reasonable times as the Commissioners consider necessary.

(9) Where the Commissioners require a valuation to be made by a person named by them, the reasonable costs of such valuation shall be defrayed by the Commissioners.

(10) Property passing on any death shall not be aggregated more than once, nor shall Estate duty in respect thereof be more than once levied on the same death.

8. (1) The existing law and practice relating to any of the duties now leviable on or with reference to death shall, subject to the provisions of this Act and so far as the same are applicable, apply for the purposes of the collection, recovery, and repayment of Estate duty, and for the exemption of the property of common seamen, marines or soldiers who are slain or die in the service of Her Majesty, and for the purpose of payment of sums under one hundred pounds without requiring representation, as if such law and practice were in terms made applicable to this Part of this Act.

(2) Sections twelve to fourteen of the Customs and Inland Revenue Act, 1889, and section forty-seven of the Local Registration of Title (Ireland) Act, 1891, shall apply as if Estate duty were therein mentioned as well as Succession duty, and as if an account were not settled within the meaning of any of the above sections until the time for the payment of the duty on such account has arrived.

(3) The executor of the deceased shall, to the best of his knowledge and belief, specify in appropriate accounts annexed to the Inland Revenue affidavit all the property in respect of which Estate duty is payable upon the death of the deceased, and shall be accountable for the Estate duty in respect of all personal property wheresoever situate of which the deceased was competent to dispose at his death, but shall not be liable for any duty in excess of the assets which he has received as executor, or might but for his own neglect or default have received.

(4) Where property passes on the death of the deceased, and his executor is not accountable for the Estate duty in respect of such property, every person to whom any property so passes for any beneficial interest in possession, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested, and every person in whom the same is vested in possession by alienation or other derivative title shall be accountable for the Estate duty on the property, and shall, within the time required by this Act or such later time as the Commissioners allow, deliver to the Commissioners and verify an account, to the best of his knowledge and belief, of the property: Provided that nothing in this section contained shall render a person accountable for duty who acts merely as agent or bailiff for another person in the management of property.

(5) Every person accountable for Estate duty, and every person whom the Commissioners believe to have taken possession of or administered any part of

the estate in respect of which duty is leviable on the death of deceased, or of the income of any part of such estate, shall, to the best of his knowledge and belief, if required by the Commissioners, deliver to them and verify a statement of such particulars together with such evidence as they require relating to any property which they have reason to believe to form part of an estate in respect of which Estate duty is leviable on the death of the deceased.

(6) A person who wilfully fails to comply with any of the foregoing provisions of this section shall be liable to pay one hundred pounds, or a sum equal to double the amount of the Estate duty, if any, remaining unpaid for which he is accountable, according as the Commissioners elect: Provided that the Commissioners, or in any proceeding for the recovery of such penalty the Court, shall have power to reduce any such penalty.

(7) Estate duty shall, in the first instance, be calculated at the appropriate rate according to the value of the estate as set forth in the Inland Revenue affidavit or account delivered, but if afterwards it appears that for any reason too little duty has been paid, the additional duty shall, unless a certificate of discharge has been delivered under this Act, be payable and be treated as duty in arrear.

(8) The Commissioners on application from a person accountable for the duty on any property forming part of an estate shall, where they consider that it can conveniently be done, certify the amount of the valuation accepted by them for any class or description of property forming part of such estate.

(9) Where the Commissioners are satisfied that the Estate duty leviable in respect of any property cannot without excessive sacrifice be raised at once, they may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding four per cent. or any higher interest yielded by the property, and on such terms, as the Commissioners think fit.

(10) [Interest on arrears of Estate duty shall be paid as if they were arrears of legacy duty.][1]

(11) If after the expiration of twenty years from a death upon which Estate duty became leviable any such duty remains unpaid, the Commissioners may, if they think fit, on the application of any person accountable or liable for such duty or interested in the property, remit the payment of such duty or any part thereof or any interest thereon.

And see F. A. 1907, *s.* 13.

(12) Where it is proved to the satisfaction of the Commissioners that too much Estate duty has been paid, the excess shall be repaid by them, and in cases where the over-payment was due to over valuation by the Commissioners, with interest at three per cent. per annum.[2]

(13) Where any proceeding for the recovery of Estate duty in respect of any property is instituted, the High Court shall have jurisdiction to appoint a receiver of the property and the rents and profits thereof, and to order a sale of the property.

(14) All affidavits, accounts, certificates, statements, and forms used for the purpose of this Part of this Act shall be in such form, and contain such particulars, as may be prescribed, and if so required by the Commissioners shall be in duplicate, and accounts and statements shall be delivered and verified on oath[3] and by production of books and documents in the manner prescribed, and any person who wilfully fails to comply with the provisions of this enactment shall be liable to the penalty above in this section mentioned.

---

[1] The words in square brackets were repealed by F.A. 1896, s. 40.
[2] Now 4 per cent., F.A. 1919, s. 30.
[3] *But see* F.A. 1900, s. 13 (2).

(15) No charge shall be made for any certificate given by the Commissioners under this Act.

(16) The Estate duty may be collected by means of stamps or such other means as the Commissioners prescribe.

(17) The form of certificate required to be given by the proper officer of the court under section thirty of the Customs and Inland Revenue Act, 1881, may be varied by a rule of court in such manner as may appear necessary for carrying into effect this Act.

(18) Nothing in this section shall render liable to or accountable for duty a *bonâ fide* purchaser for valuable consideration without notice.

9. (1) A rateable part of the Estate duty on an estate, in proportion to the value of any property which does not pass to the executor as such, shall be a first charge on the property in respect of which duty is leviable; provided that the property shall not be so chargeable as against a *bonâ fide* purchaser thereof for valuable consideration without notice.

(2) On an application submitting in the prescribed form the description of the lands or other subjects of property (whether hereditaments, stocks, funds, shares, or securities), and of the debts and incumbrances allowed by the Commissioners in assessing the value of the property for the purposes of Estate duty, the Commissioners shall grant a certificate of the Estate duty paid in respect of the property, and specify the debts and incumbrances so allowed, as well as the lands or other subjects of property.

(3) Subject to any repayment of Estate duty arising from want of title to the land or other subjects of property, or from the existence of any debt or incumbrance thereon for which under this Act an allowance ought to have been but has not been made, or from any other cause, the certificate of the Commissioners shall be conclusive evidence that the amount of duty named therein is a first charge on the lands or other subjects of property after the debts and incumbrances allowed as aforesaid: Provided that any such repayment of duty by the Commissioners shall be made to the person producing to them the said certificate.

(4) If the rateable part of the Estate duty in respect of any property is paid by the executor, it shall where occasion requires be repaid to him by the trustees or owners of the property, but if the duty is in respect of real property, it may, unless otherwise agreed upon, be repaid by the same instalments and with the same interest as are in this Act mentioned.

(5) A person authorised or required to pay the Estate duty in respect of any property shall, for the purpose of paying the duty, or raising the amount of the duty when already paid, have power, whether the property is or is not vested in him, to raise the amount of such duty and any interest and expenses properly paid or incurred by him in respect thereof, by the sale or mortgage of or a terminable charge on that property or any part thereof.

(6) A person having a limited interest in any property, who pays the Estate duty in respect of that property, shall be entitled to the like charge, as if the Estate duty in respect of that property had been raised by means of a mortgage to him.

(7) Any money arising from the sale of property comprised in a settlement, or held upon trust to lay out upon the trusts of a settlement, and capital money arising under the Settled Land Act, 1882, may be expended in paying any Estate duty in respect of property comprised in the settlement and held upon the same trusts.

10. (1) Any person aggrieved by the decision of the Commissioners with respect to the repayment of any excess of duty paid, or by the amount of duty claimed by the Commissioners, whether on the ground of the value of any property [1] or the rate charged or otherwise, may, on payment of, or giving security as hereinafter mentioned for, the duty claimed by the Commissioners or such portion of it as is then payable by him, appeal to the High Court within the time and in the manner and

[1] Where the value of real or leasehold property is involved, the appeal should now be made under Part I, F. A. 1910, ss. 33, 34, 42 and 60 (3).

on the conditions directed by rules of Court, and the amount of duty shall be determined by the High Court, and if the duty as determined is less than that paid to the Commissioners the excess shall be repaid.

(2) No appeal shall be allowed from any order, direction, determination, or decision of the High Court in any appeal under this section except with the leave of the High Court or Court of Appeal.

(3) The costs of the appeal shall be in the discretion of the Court, and the Court, where it appears to the Court just, may order the Commissioners to pay on any excess of duty repaid by them interest at the rate of three per cent. per annum for such period as appears to the Court just.

(4) Provided that the High Court, if satisfied that it would impose hardship to require the appellant, as a condition of an appeal, to pay the whole or, as the case may be, any part of the duty claimed by the Commissioners or of such portion of it as is then payable by him, may allow an appeal to be brought on payment of no duty, or of such part only of the duty as to the Court seems reasonable, and on security to the satisfaction of the Court being given for the duty, or so much of the duty as is not so paid, but in such case the Court may order interest at the rate of three per cent. per annum to be paid on the unpaid duty so far as it becomes payable under the decision of the Court.

(5) Where the value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed ten thousand pounds, the appeal under this section may be to the county court for the county or place in which the appellant resides or the property is situate, and this section shall for the purposes of the appeal apply as if such county court were the High Court.

See F. A. 1896, *s.* 22, *for words added to this sub-section.*

(6) The county council of every county or county borough in Great Britain, shall, within twelve months after the commencement of this Act, and may thereafter from time to time, appoint a sufficient number of qualified persons to act as valuers for the purposes of this Act in their respective counties, and shall fix a scale of charges for the remuneration of such persons, and the Court may refer any question of disputed value under this section to the arbitration of any person so appointed for the county in which the appellant resides or the property is situate ; and the costs of any such arbitration shall be part of the costs of the appeal.

But see now F. A. 1910, *s.* 60 (3), *as to appeals relating to the value of real and leasehold property.*

Discharge from and Apportionment of Duty.

11. (1) The Commissioners on being satisfied that the full estate duty has been or will be paid in respect of an estate or any part thereof shall, if required by the persons accounting for the duty, give a certificate to that effect, which shall discharge from any further claim for Estate duty the property shown by the certificate to form the estate or part thereof as the case may be.

(2) Where a person accountable for the Estate duty in respect of any property passing on a death applies after the lapse of two years from such death to the Commissioners, and delivers to them and verifies a full statement to the best of his knowledge and belief of all property passing on such death and the several persons entitled thereto, the Commissioners may determine the rate of the Estate duty in respect of the property for which the applicant is accountable, and on payment of the duty at that rate, that property and the applicant so far as regards that property shall be discharged from any further claim for Estate duty, and the Commissioners shall give a certificate of such discharge.

And see F. A. 1907, *s.* 14.

(3) A certificate of the Commissioners under this section shall not discharge any person or property from Estate duty in case of fraud or failure to disclose material facts, and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death, and the duty in respect

of such property shall be at such rate as would be payable if the value thereof were added to the value of the property in respect of which duty has been already accounted for :

(4) Provided nevertheless that a certificate purporting to be a discharge of the whole Estate duty payable in respect of any property included in the certificate shall exonerate a *bonâ fide* purchaser for valuable consideration without notice from the duty notwithstanding any such fraud or failure.

12. The Commissioners in their discretion, upon application by a person entitled to an interest in expectancy, may commute the Estate duty which would or might, but for the commutation, become payable in respect of such interest for a certain sum to be presently paid, and for determining that sum shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty, and interest being reckoned at three per cent.[1]; and on the receipt of such sum they shall give a certificate of discharge accordingly.

13. (1) Where, by reason of the number of deaths on which property has passed or of the complicated nature of the interests of different persons in property which has passed on death, or from any other cause, it is difficult to ascertain exactly the amount of death duties or any of them payable in respect of any property or any interest therein, or so to ascertain the same without undue expense in proportion to the value of the property or interests, the Commissioners on the application of any person accountable for any duty thereon, and upon his giving to them all the information in his power respecting the amount of the property and the several interests therein, and other circumstances of the case, may by way of composition for all or any of the death duties payable in respect of the property, or interest, and the various interests therein, or any of them, assess such sum on the value of the property, or interest, as having regard to the circumstances appears proper, and may accept payment of the sum so assessed, in full discharge of all claims for death duties in respect of such property or interest, and shall give a certificate of discharge accordingly :

(2) Provided that the certificate shall not discharge any person from any duty in case of fraud or failure to disclose material facts.

(3) In this section the expression "death duties" means the Estate duty under this Act, the duties mentioned in the First Schedule to this Act and the legacy and succession duties, and the duty payable on any representation or inventory under any Act in force before the Customs and Inland Revenue Act, 1881.

14. (1) In the case of property which does not pass to the executor as such an amount equal to the proper rateable part of the Estate duty may be recovered by the person, who being authorised or required to pay the Estate duty in respect of any property has paid such duty, from the person entitled to any sum charged on such property (whether as capital or as an annuity or otherwise), under a disposition not containing any express provision to the contrary.

(2) Any dispute as to the proportion of Estate duty to be borne by any property or person, may be determined upon application by any person interested in manner directed by Rules of Court, either by the High Court, or, where the amount in dispute is less than fifty pounds, by a county court for the county or place in which the person recovering the same resides, or the property in respect of which the duty is paid is situate.

(3) Any person from whom a rateable part of Estate duty can be recovered under this section shall be bound by the accounts and valuations as settled between the person entitled to recover the same and the Commissioners.

15. (1) Estate duty shall not be payable in respect of a single annuity not exceeding twenty-five pounds purchased or provided by the deceased, either by

[1] Now 4 per cent., F.A. 1919, s. 30.

himself alone or in concert or arrangement with any other person, for the life of himself and of some other person and the survivor of them, or to arise on his own death in favour of some other person; and if in any case there is more than one such annuity, the annuity first granted shall be alone entitled to the exemption under this section.

(2) It shall be lawful for the Treasury to remit the Estate duty, or any other duty leviable on or with reference to death, in respect of any such pictures, prints, books, manuscripts, works of art or scientific collections, as appear to the Treasury to be of national, scientific, or historic interest, and to be given or bequeathed for national purposes, or to any university, or to any county council or municipal corporation, and no property the duty in respect of which is so remitted shall be aggregated with any other property for the purposes of fixing the rate of Estate duty.

(3) Estate duty shall not be payable in respect of any pension or annuity payable by the Government of British India to the widow or child of any deceased officer of such Government, notwithstanding that the deceased contributed during his lifetime to any fund out of which such pension or annuity is paid.

(4) Estate duty shall not be payable in respect of any advowson or church patronage which would have been free from succession duty under section twenty-four of the Succession Duty Act, 1853.

Small Estates.

16. (1) The provisions of sections thirty-three, thirty-five, and thirty-six of the Customs and Inland Revenue Act, 1881 (relating to the obtaining of representation to the deceased where the gross value of his personal estate does not exceed three hundred pounds), shall apply with the necessary modifications to the case where the gross value of the property real and personal in respect of which Estate duty is payable on the death of the deceased, exclusive of property settled otherwise than by will of the deceased, does not exceed five hundred pounds, and where the gross value does not exceed three hundred pounds the fixed duty shall be thirty shillings, and where the gross value exceeds three hundred pounds and does not exceed five hundred pounds the fixed duty shall be fifty shillings.

And see F. A. 1910, *s.* 61 (2) and Revenue Act, 1903, s. 14.

(2) All such property may be comprised in the notice under the said section thirty-three.

(3) Where the net value of the property, real and personal, in respect of which Estate duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed one thousand pounds, such property, for the purpose of Estate duty, shall not be aggregated with any other property, but shall form an estate by itself; and where the fixed duty on Estate duty has been paid upon the principal value of that estate, the settlement Estate duty and the legacy and succession duties shall not be payable under the will or intestacy of the deceased in respect of that estate.

(4)[1] [Where representation granted under this section if granted in England extends to property in Ireland, and if granted in Ireland extends to property in England, the principal registrar of the Probate Division of the High Court in England or Ireland, as the case may be, shall affix the seal of the court thereto on the same being sent to him for that purpose, with the fee of two shillings and sixpence.]

(5) Where the fixed duty of thirty or fifty shillings is paid within twelve months after the death of the deceased, interest on such duty shall not be payable.

[1] Repealed by Supreme Court of Judicature (Consolidation) Act 1925, so far as it related to the re-sealing in England of Irish Grants made in respect of the estates of persons dying on or after 1st April 1923.

Rates of Estate Duty.

17.[1] The rates of Estate duty shall be according to the following scale :—

Where the Principal Value of the Estate						Estate Duty shall be payable at the Rate per cent. of
	£				£	
Exceeds	100	and does not exceed			500	One pound.
„	500	„	„		1,000	Two pounds.
„	1,000	„	„		10,000	Three pounds.
„	10,000	„	„		25,000	Four pounds.
„	25,000	„	„		50,000	Four pounds ten shillings.
„	50,000	„	„		75,000	Five pounds.
„	75,000	„	„		100,000	Five pounds ten shillings.
„	100,000	„	„		150,000	Six pounds.
„	150,000	„	„		250,000	Six pounds ten shillings.
„	250,000	„	„		500,000	Seven pounds.
„	500,000	„	„		1,000,000	Seven pounds ten shillings.
„	1,000,000	-	-	-	-	Eight pounds.

[The rate of the settlement Estate duty where the property is settled shall be one per cent.]

[Provided that for any fractional part of ten pounds over ten pounds or any multiple thereof, the Estate duty and the settlement Estate duty shall be payable at the rate per cent. for the full sum of ten pounds.]

Succession Duty.

18. (1) The value for the purpose of Succession duty of a succession to real property arising[2] on the death of a deceased person shall, where the successor is competent to dispose of the property, be the principal value of the property, after deducting the Estate duty payable in respect thereof on the said death and the expenses if any properly incurred of raising and paying the same ; and the duty shall be a charge on the property, and shall be payable by the same instalments as are authorised by this Act for Estate duty on real property, with interest at the rate of three per cent. per annum[3] ; and the first instalment shall be payable and the interest shall begin to run at the expiration of twelve months after the date on which the successor became entitled in possession to his succession or to the receipt of the income and profit thereof ; and after the expiration of the said twelve months the provisions with respect to discount shall not apply.

(2) The principal value of real property for the purpose of Succession duty shall be ascertained in the same manner as it would be ascertained under the provisions of this Act for the purpose of Estate duty ; and in the case of any agricultural property where no part of the principal value is due to the expectation of an increased income from such property, the annual value for the purpose of Succession duty shall be arrived at in the same manner as under the provisions of this Part of this Act for the purpose of Estate duty.

[1] These rates of Estates Duty were repealed by F. A. 1907, s. 30, as to persons dying on or after 19th April, 1907. The proviso was repealed by F. A. 1896, s. 40. The rate of Settlement Estate Duty was increased by F. A. 1910, s. 54, to 2 per cent. as to persons dying on or after 30th April, 1909, but by F. A. 1914, s. 14, Settlement Estate Duty was abolished in the case of persons dying after 11th May, 1914.

[2] As to meaning, *see* F .A. 1925, s. 24.

[3] Now 4 per cent. F.A. 1919, s. 30.

Local Taxation Grant.[1]

19. In substitution for the grant out of the Probate duties under the Local Government Act, 1888, the Probate Duty (Scotland and Ireland) Act, 1888, and the Local Government (Scotland) Act, 1889, there shall be paid, out of the proceeds of the Estate duty derived from personal property, such sum as the Commissioners in accordance with regulations made by the Treasury under those Acts, may determine to be an amount equal to one and a half per cent. on the net value of such of the property in respect of which Estate duty is leviable as would, if this Act had not been passed, have been chargeable with the duty imposed by section twenty-seven of the Customs and Inland Revenue Act, 1881, on Inland Revenue affidavits, and the first mentioned Acts shall apply, as if the sum so determined were the Probate duty grant or one-half of the proceeds of the sums collected in respect of the Probate duties (as the case requires) within the meaning of those Acts.

British Possessions.

20. (1) Where the Commissioners are satisfied, that in a British possession to which this section applies,[2] duty is payable by reason of a death in respect of any property situate in such possession and passing on such death, they shall allow a sum equal to the amount of that duty to be deducted from the Estate duty payable in respect of that property on the same death.

(2) Nothing in this Act shall be held to create a charge for Estate duty on any property situate in a British possession, while so situate, or to authorise the Commissioners to take any proceedings in a British possession for the recovery of any Estate duty.

(3) Her Majesty the Queen may, by Order in Council, apply this section to any British possession, where Her Majesty is satisfied that, by the law of such possession either no duty is leviable in respect of property situate in the United Kingdom when passing on death, or that the law of such possession as respects any duty so leviable is to the like effect as the foregoing provisions of this section.

(4) Her Majesty in Council may revoke any such Order, where it appears that the law of the British possession has been so altered that it would not authorise the making of an Order under this section.

Savings and Definitions.

21.[3] (1) Estate duty shall not be payable on the death of a deceased person in respect of personal property settled by a will or disposition made by a person dying before the commencement of this Part of this Act, in respect of which property any duty mentioned in paragraphs one and two of the First Schedule to this Act, or the duty payable on any representation or inventory under any Act in force before the Customs and Inland Revenue Act, 1881, has been paid or is payable, unless in either case the deceased was at the time of his death, or at any time since the will or disposition took effect had been, competent to dispose of the property.

Amended by F. A. 1910, *s.* 55, *but see F. A.* 1914, *s.* 14.

(2) Where a person died before the commencement of this Part of this Act, the duties mentioned in the First Schedule to this Act shall continue to be payable in like manner in all respects as if this Act had not passed.

(3) Where an interest in expectancy in any property has, before the commencement of this part of this Act, been *bonâ fide* sold or mortgaged for full consideration in money or money's worth, then no other duty on such property shall be payable by the purchaser or mortgagee when the interest falls into possession, than would have been payable if this Act had not passed; and in the case of a mortgage, any

1 The payment directed to be made by s. 19 is by F. A. 1907, s. 17, to be made out of the Consolidated Fund.

2 *See* page 273 for a list of such possessions, and F.A. 1922, s. 45.

3 Sub-section 1 is amended by F.A. 1910, s. 55, and F.A. 1914, s. 14. Sub-section 4 is repealed by F. A. 1914, s. 18 (1).

higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

(4) [The settlement Estate duty of one per cent. shall not be payable in respect of property settled by a disposition which has taken effect before the commencement of this Part of this Act.]

(5) Where a husband or wife is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which has taken effect before the commencement of this part of this Act, and on his or her death the survivor becomes entitled to the income of the property settled by such survivor, Estate duty shall not be payable in respect of that property until the death of the survivor.

22. (1) In this Part of this Act, unless the context otherwise requires :—

(*a*) The expressions "deceased person" and "the deceased" mean a person dying after the commencement of this Part of this Act :

(*b*) The expression "will" includes any testamentary instrument :

(*c*) The expression "representation" means probate of a will or letters of administration :

(*d*) The expression "executor" means the executor or administrator of a deceased person, and includes, as regards any obligation under this Part of this Act, any person who takes possession of or intermeddles with the personal property of a deceased person :

(*e*) The expression "Estate duty" means Estate duty under this Act :

(*f*) The expression "property" includes real property and personal property and the proceeds of sale thereof respectively and any money or investment for the time being representing the proceeds of sale :

(*g*) The expression "agricultural property" [1] means agricultural land, pasture and woodland, and also includes such cottages, farm buildings, farm houses, and mansion houses (together with the lands occupied therewith) as are of a character appropriate to the property :

(*h*) The expression "settled property" means property comprised in a settlement :

(*i*) The expression "settlement" means any instrument, whether relating to real property or personal property, which is a settlement within the meaning of section two of the Settled Land Act, 1882, or if it related to real property would be a settlement within the meaning of that section, and includes a settlement effected by a parol trust :

(*j*) The expression "interest in expectancy" includes an estate in remainder or reversion and every other future interest whether vested or contingent, but does not include reversions expectant upon the determination of leases :

(*k*) The expression "incumbrances" includes mortgages and terminable charges :

(*l*) The expression "property passing on the death" includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and the expression "on the death" includes "at a period ascertainable only by reference to the death" :

(*m*) The expression "the Commissioners" means the Commissioners of Inland Revenue :

(*n*) The expression "Inland Revenue affidavit" means an affidavit made under the enactments specified in the Second Schedule to this Act with the account and schedule annexed thereto :

(*o*) The expression "prescribed" means prescribed by the Commissioners.

[1] *See* F. A. 1925, s. 23.

(2) For the purposes of this Part of this Act—

(*a*) A person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property, including a tenant in tail whether in possession or not; and the expression "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exerciseable by instrument *inter vivos* or by will, or both, but exclusive of any power exerciseable in a fiduciary capacity under a disposition not made by himself, or exerciseable as tenant for life under the Settled Land Act, 1882, or as mortgagee:

(*b*) A disposition taking effect out of the interest of the deceased person shall be deemed to have been made by him, whether the concurrence of any other person was or was not required:

(*c*) Money which a person has a general power to charge on property shall be deemed to be property of which he has power to dispose.

(3) This Part of this Act shall apply to property in which the wife or husband of the deceased takes an estate in dower or by the curtesy or any other like estate, in like manner as it applies to property settled by the will of the deceased.

Application to Scotland.

23. In the application of this Part of this Act to Scotland unless the context otherwise requires:—

(1) The Court of Session shall be substituted for the High Court:

(2) "Sheriff court" shall be substituted for "county court":

(3) "Confirmation" shall be substituted for "representation":

(4) The expression "receiver of the property and of the rents and profits thereof," means a judicial factor upon the property:

(5) The expression "Inland Revenue affidavit," means the inventory of the personal estate of a deceased now required by law, and includes an additional inventory:

(6) The expression "on delivering the Inland Revenue affidavit" means on exhibiting and recording a duly stamped inventory as provided by section thirty-eight of the Probate and Legacy Duties Act, 1808;

(7) Section thirty-four of the Customs and Inland Revenue Act, 1881, shall be substituted for section thirty-three of that Act, and the Acts referred to in such section thirty-four shall extend to an estate of a gross value not exceeding five hundred pounds, and an application under the said Acts may be made to any commissary clerk, and any commissary clerk shall affix the seal of the court to any representation granted in England or Ireland upon the same being sent to him for that purpose, enclosing a fee of two shillings and sixpence[1]:

(8) The expression "personal property" means moveable property:

(9) The expression "real property" includes heritable property:

(10) The expression "incumbrance" includes any heritable security, or other debt or payment secured upon heritage:

(11) The expression "executor" means every person who as executor, nearest of kin, or creditor, or otherwise, intromits with or enters upon the possession or management of any personal property of a deceased person:

(12) The property comprised in any special assignation or disposition taking effect on death shall be deemed to pass on death within the meaning of this Act:

(13) The expression "trustee" includes a tutor, curator, and judicial factor:

[1] *See* Executors (Scotland) Act, 1900, s. 9.

(14) The expression "settled property" shall not include property held under entail:

(15) An institute or heir of entail in possession of an entailed estate shall whether sui juris or not be deemed for the purposes of this Act to be a person competent to dispose of such estate:

And see F. A. 1896, *s.* 23, *for words added.*

(16) Where an entailed estate passes on the death of the deceased to an institute or heir of entail, who is not entitled to disentail such estate without either obtaining the consent of one or more subsequent heirs of entail or having the consent of such one or more subsequent heirs valued and dispensed with, settlement Estate duty as well as Estate duty shall be paid in respect of such estate but neither Estate duty nor settlement Estate duty shall be payable again in respect of such estate, until such estate is disentailed, or until an heir of entail to whom it passes on or subsequent to the death of the institute or heir first mentioned, and who is entitled to disentail it without obtaining the consent of any subsequent heir or heirs or having the consent of any subsequent heir or heirs valued and dispensed with, dies:

And see F. A. 1914, *s.* 14.

(17) Where an institute or heir of entail in possession of an entailed estate, who is not entitled to disentail such estate without either obtaining the consent of one or more subsequent heirs of entail or having the consent of such one or more subsequent heirs valued and dispensed with, has paid Estate duty in respect of such estate, and afterwards disentails such estate, he shall be entitled to deduct from the value in money of the expectancy or interest in such estate of such one or more subsequent heirs, payable by him to them in respect of their consents having been granted or dispensed with, a proper rateable part of the Estate duty paid by him as aforesaid:

(18) Where any person who pays Estate duty on any property, and in whom the property is not vested, is by this Act authorised to raise such duty by the sale or mortgage of that property, or any part thereof, it shall be competent for such person to apply to the Court of Session—

(*a*) for an order of sale of the property or part of it, and in the event of the court granting such order, it shall provide for the payment out of the price of the amount of the Estate duty which has been paid by such person, and the court shall thereafter make such order as to the disposal of the surplus, if any, of the price, by way of investment or otherwise, as to the court shall seem proper; the court may in such order specify the time and place at which, the person by whom, and the advertisement or notice after which the sale shall be made, and may ordain the person in whom the property is vested to grant a disposition thereof in favour of the purchaser, and if the person in whom the property is vested refuses or fails to do so, the court shall grant authority to the clerk of court to execute such disposition, and such disposition so executed shall be as valid as if it had been executed by the person in whom the property is vested; or

(*b*) for an order ordaining the person in whom the property is vested to grant a bond and disposition in security over the property in favour of the person who has paid the Estate duty, for the amount of the said duty, and if the person in whom the property is vested refuses or fails to do so, the court shall grant authority

to the clerk of court to execute such a bond and disposition in security, and such bond and disposition in security so executed shall be as valid as if it had been executed by the person in whom the property is vested, and shall be a first charge upon the property after any debt or incumbrance for which an allowance is directed to be made under this Act in determining the value of the property for the purpose of Estate duty;

Provided also that summary diligence shall not be competent thereupon, and that nothing herein contained shall make the duty to be recovered by the methods of these sub-sections (*a*) and (*b*) recoverable at any earlier time than if it had been recovered by direct action against the person ultimately liable for the duty;

(19) This part of this Act shall apply to property in which the wife or husband of the deceased takes an estate of terce or curtesy or any other like estate in like manner as it applies to property settled by the will of the deceased.

Commencement.

24. This Part of this Act shall come into operation on the expiration of the first day of August one thousand eight hundred and ninety-four, in this Part of this Act referred to as the commencement of this Part of this Act.

PART VI.

Short Title.

42. This Act may be cited as the Finance Act, 1894.

FIRST SCHEDULE.

Existing Duties referred to.

1. The stamp duties imposed by the Customs and Inland Revenue Act, 1881, on the affidavit to be required and received from the persons applying for probate or letters of administration in England or Ireland, or on the inventory to be exhibited and recorded in Scotland.

2. The stamp duties imposed by section 38 of the Customs and Inland Revenue Act, 1881, as amended and extended by section 11 of the Customs and Inland Revenue Act, 1889, on the value of personal or moveable property to be included in accounts thereby directed to be delivered.

3. The additional succession duties imposed by section 21 of the Customs and Inland Revenue Act, 1888.

4. The temporary estate duties imposed by sections 5 and 6 of the Customs and Inland Revenue Act, 1889.

5. The duty at the rate of one pound per cent. which would by virtue of the Acts in force relating to legacy duty or succession duty have been payable under the will or intestacy of the deceased, or under his disposition or any devolution from him under which respectively Estate duty has been paid, or under any other disposition under which Estate duty has been paid.

SECOND SCHEDULE.

ACTS REFERRED TO.

Session and Chapter.	Title or Short Title.	Section referred to.
55 Geo. 3, c. 184 -	The Stamp Act, 1815 - -	Section thirty-eight.
56 Geo. 3, c. 56 -	The Probate Duty (Ireland) Act, 1816.	Section one hundred and seventeen.
43 Vict., c. 14 - -	The Customs and Inland Revenue Act, 1880.	Section ten.
44 & 45 Vict., c. 12 -	The Customs and Inland Revenue Act, 1881.	Sections twenty-nine and thirty-two.

FINANCE ACT, 1896.

[59 & 60 VICTORIA, CHAPTER 28.]

PART IV. [7th August, 1896.

DEATH DUTIES.

Estate Duty.

14. Where property is settled by a person on himself for life, and after his death on any other persons with an ultimate reversion of an absolute interest or absolute power of disposition to the settlor, the property shall not be deemed for the purpose of the principal Act to pass to the settlor on the death of any such other person after the commencement of this Part of this Act, by reason only that the settlor, being then in possession of the property as tenant for life, becomes, in consequence of such death, entitled to the immediate reversion, or acquires an absolute power to dispose of the whole property.

15. (1) Where by a disposition of any property an interest is conferred on any person other than the disponer for the life of such person or determinable on his death, and such person enters into possession of the interest and thenceforward retains possession thereof to the entire exclusion of the disponer or of any benefit to him by contract or otherwise, and the only benefit which the disponer retains in the said property is subject to such life or determinable interest, and no other interest is created by the said disposition, then, on the death of such person after the commencement of this Part of this Act, the property shall not be deemed for the purpose of the principal Act to pass by reason only of its reverter to the disponer in his lifetime.

(2) Where by a disposition of any property any such interest as above in this section mentioned is conferred on two or more persons, either severally or jointly, or in succession, this section shall apply in like manner as where the interest is conferred on one person.

(3) Provided that the foregoing sub-sections shall not apply where such person or persons taking the said life or determinable interest had at any time prior to the disposition been himself or themselves competent to dispose of the said property.

(4) Where the deceased person was entitled by law to the rents and profits of real property (as defined by section one of the Succession Duty Act, 1853) of his wife, and has died in her lifetime, such property shall not be deemed for the

purpose of the principal Act to pass on his death by reason of her then becoming entitled to the property in virtue of her former interest.

16. The estate duty due in respect of any annuity or other definite annual sum, whether terminable or perpetual, referred to in section two (1) (*d*) of the principal Act, may, at the option of the person delivering the account, be paid by four equal yearly instalments, the first of which shall be due at the end of twelve months from the date of the death, and after the end of those twelve months interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly, but the duty for the time being unpaid, with interest to the date of payment, may be paid at any time.

17.[1] [Section seventeen of the principal Act shall have effect as if there were added at the end thereof the following proviso in substitution for the existing proviso as to fractional parts of ten pounds :—

Provided that where the principal value of an estate comprises a fraction of one hundred pounds in excess of one hundred pounds, or of any multiple of one hundred pounds, such fraction shall be excluded from the value of the estate for the purpose of determining both the rate and the amount of duty, except that where the principal value of the estate exceeds one hundred pounds and does not exceed two hundred pounds the duty shall be one pound.]

18. (1) Simple interest at the rate of three per cent. per annum without deduction for income tax shall be payable upon all estate duty from the date of the death of the deceased, or, where the duty is payable by instalments, or becomes due at any date later than six months after the death, from the date at which the first instalment of the duty becomes due, and shall be recoverable in the same manner as if it were part of the duty.[2]

(2) The foregoing provision shall apply to the interest on all death duties as defined by section thirteen of the principal Act in like manner as if it were herein re-enacted and made applicable to those duties.

(3) The Commissioners of Inland Revenue may remit the interest on any of such death duties where the amount appears to them to be so small as not to repay the expense and trouble of calculation and account.

19 (1) The settlement estate duty leviable in respect of a legacy or other personal property settled by the will of the deceased shall (unless the will contains an express provision to the contrary) be payable out of the settled legacy or property in exoneration of the rest of the deceased's estate.

(2) The settlement estate duty leviable in respect of any such legacy or property shall be collected upon an account setting forth the particulars of the legacy or property, and delivered to the Commissioners by the executor within six months after the death, or within such further time as the Commissioners may allow.

But see now F. A. 1914, *s.* 14.

20.[3] (1) Where any property passing on the death of a deceased person consists of such pictures, prints, books, manuscripts, works of art, scientific collections, or other things not yielding income as appear to the Treasury to be of national, scientific, or historic interest, [and is settled so as to be enjoyed in kind in succession by different persons,] such property shall not, on the death of such deceased person, be aggregated with other property, but shall form an estate by itself, and, while enjoyed in kind [by a person not competent to dispose of the same,] be exempt from estate duty, but if it is sold [or is in the possession of some person who is then competent to dispose of the same,] shall become liable to estate duty.

1 Repealed by F.A. 1900, s. 18, as to persons dying on or after 9th April, 1900.

2 F.A. 1919, s. 30, substitutes 4 per cent. for 3 per cent. in the case of interest accruing due after 31st July 1919.

3 The words in square brackets were repealed by F. A. 1910, s. 96 (1), except as respects persons dying before 30th April, 1909. The whole section was repealed by F. A. 1930, s. 53 (8), except as regards persons dying before 1st August, 1930.

(2) The person selling the same, or for whose benefit the same is sold, [and also the person being in possession and competent to dispose of the same] shall be accountable for the duty, and shall deliver an account, in accordance with section eight of the principal Act, in the case of a sale within one month after the sale, [and in the case of a person coming into possession, or if in possession becoming competent to dispose, within six months after he so comes into possession, or becomes competent to dispose].

See now F. A. 1930, *s.* 40, *as to persons dying on or after 1st August*, 1930.

21. Where on the death of a deceased person estate duty becomes payable by a person in respect of any property passing under a settlement made by a will or disposition which took effect before the commencement of the principal Act, and before that commencement any duty mentioned in paragraphs three to five of the First Schedule to the principal Act has been paid or is payable under the same will or disposition on the capital value of the property, the Commissioners of Inland Revenue shall allow the duty so paid or payable as a deduction from the estate duty to the extent to which it has been paid or is payable in respect of the property on which estate duty is payable.

And see F.A. 1907, *s.* 15.

22. There shall be added to sub-section five of section ten of the principal Act the following proviso: Provided that in every such case any party shall have a right of appeal to Her Majesty's Court of Appeal.

23. The Finance Act, 1894, shall be construed as if there were added in section twenty-three thereof, after sub-section fifteen, the following enactment:

Provided that for the purposes of section eighteen of this Act such institute or heir of entail shall not be deemed to be a person competent to dispose of such estate, unless he is entitled to disentail it without obtaining the consent of any subsequent heir or entail, or having the consent of any subsequent heir valued and dispensed with.

24. (1) Unless the context otherwise requires—

(*a*) this Part of this Act shall come into operation on the first day of July one thousand eight hundred and ninety-six, which day is in this Part of this Act referred to as the commencement of this Part of this Act; and

(*b*) the expression "deceased person" means a person dying after the commencement of this Part of this Act.

(2) Part I of the Finance Act, 1894, is in this Act referred to as "the principal Act."

* * * * * * * * *

39. . . . Part Four of this Act shall be construed together with Part One of the Finance Act, 1894.

40.[1] The Acts mentioned in the schedule to this Act are hereby repealed to the extent in the third column of that schedule mentioned.

41. This Act may be cited as the Finance Act, 1896.

---

[1] Section 40 and the Schedule were taken off the Statute Book by the Statute Law Revision Act, 1908, subject, however, to a proviso under which the repeal effected by s. 40 was not affected.

SCHEDULE.[1]

PART III.

DEATH DUTIES.

Session and Chapter.	Short Title.	Extent of Repeal.
31 & 32 Vict., c. 124 -	The Inland Revenue Act, 1868.	In section nine, from "at the rate of four pounds," to "as part thereof."
57 & 58 Vict., c. 30 -	The Finance Act, 1894 -	Section six, in sub-section six, the words "at the rate of three per cent. per annum," and the words "and shall form part of the estate duty," and in sub-section eight, the words "less income tax."
		Section eight, sub-section ten.
		Section seventeen, from "provided that," to the end of the section.

FINANCE ACT, 1898.

[61 & 62 VICTORIA, CHAPTER 10.]

PART V. [1st July, 1898.

Estate Duties.

13. Section five, sub-section two, of the Finance Act, 1894, shall be read and have effect as if the following words had been inserted at the end thereof "and who if on his death subsequent limitations under the settlement take effect in respect of such property was sui juris at the time of his death or had been sui juris at any time while so competent to dispose of the property.

14. Where in the case of a death occurring after the commencement of this Act settlement estate duty is paid in respect of any property contingently settled and it is thereafter shown that the contingency has not arisen, and cannot arise, the said duty paid in respect of such property shall be repaid.

But see F. A. 1914, *s.* 14.

17. This Act may be cited as the Finance Act, 1898.

[1] *See* footnote to s. 40.

FINANCE ACT, 1900.

[63 & 64 Victoria, Chapter 7.]

PART III. [9th April, 1900.

Death Duties.

11. (1) In the case of every person dying after the thirty-first day of March nineteen hundred, property whether real or personal in which the deceased person or any other person had an estate or interest limited to cease on the death of the deceased shall, for the purposes of the Finance Act, 1894, and the Acts amending that Act, be deemed to pass on the death of the deceased, notwithstanding that that estate or interest has been surrendered, assured, divested, or otherwise disposed of, whether for value or not, to or for the benefit of any person entitled to an estate or interest in remainder or reversion in such property, unless that surrender, assurance, divesting, or disposition was bonâ fide made or effected twelve months before the death of the deceased, and bonâ fide possession and enjoyment of the property was assumed thereunder immediately upon the surrender, assurance, divesting, or disposition, and thenceforward retained to the entire exclusion of the person who had the estate or interest limited to cease as aforesaid, and of any benefit to him by contract or otherwise.

(2) This section shall inter alia apply in Scotland to the conveyance or discharge of any life rent in favour of the fiar, or to the propulsion of the fee under any simple or tailzied destination.

And see F. A. 1910, *s.* 59, *F. A.* 1914, *s.* 14 (*c*), *and F. A.* 1930, *s.* 39.

12. (1) The exclusion enacted by the proviso to section four of the Finance Act, 1894, of property from aggregation shall in the case of every person dying after the passing of this Act cease to have effect, except as regards property in which the deceased never had an interest.

Provided that where an interest in expectancy (within the meaning of Part I of the Finance Act, 1894) in any property has before the passing of this Act been bonâ fide sold or mortgaged for full consideration in money or money's worth, then no other duty on such property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this section had not passed; and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

(2)[1] [Where settled property passes, or is deemed to pass, on the death of a person dying after the passing of this Act under a disposition made by a person dying before the commencement of Part I of the Finance Act, 1894, and such property would, if the disponer had died after the commencement of the said Part, have been liable to Estate duty upon his death, the aggregation of such property, with other property passing upon the first-mentioned death, shall not operate to enhance the rate of duty payable either upon the settled property or upon any other property so passing by more than one half per cent. in excess of the rate at which duty would have been payable if such settled property had been treated as an estate by itself.]

And see F. A. 1907, *s.* 16.

13. (1) For the purpose of determining the rate and the amount of duty, the exclusion under section seventeen of the Finance Act, 1896, of any fraction from the principal value of the estate shall in the case of every person dying after the passing of this Act cease to have effect.

(2) The Commissioners of Inland Revenue may, if they think fit, accept a statement by or on behalf of any accountable person as a correction of any Inland Revenue affidavit or account within the meaning of Part I of the Finance Act, 1894,

[1] Sub-s. (2) of s. 12 was repealed by F. A. 1927, s. 57 (6), except so far as relates to persons dying before 19th April, 1907, *see* s. 51 of that Act.

for the purposes of that Act and the Acts amending that Act, without requiring that statement to be verified on oath.

14. (1) Where any person dies from wounds inflicted, accident occurring, or disease contracted, within twelve months before death, while on active service against an enemy, whether on sea or land, and was, when the wounds were inflicted, the accident occurred, or the disease was contracted, either subject to the Naval Discipline Act or subject to military law, whether as an officer, non-commissioned officer, or soldier, under Part V of the Army Act, the Treasury may, if they think fit, on the recommendation of the Secretary of State or of the Admiralty, as the case requires, remit, or in the case of duty already paid repay, up to an amount not exceeding one hundred and fifty pounds in any one case, the whole or any part of the death duties (within the meaning of sub-section three of section thirteen of the Finance Act, 1894), leviable in respect of property passing upon the death of the deceased to his widow or lineal descendants if the total value for the purpose of estate duty of the property so passing does not exceed five thousand pounds.

(2) This section shall take effect in the case of any person dying since the eleventh day of October one thousand eight hundred and ninety-nine.

And see the Death Duties (Killed in War) Act, 1914, *as extended*, *F. A.* 1919, *s.* 31, *F. A.* 1921, *s.* 43, *and F. A.* 1924, *s.* 38.

PART VI.

General.

18.[1] The Acts specified in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

19. This Act may be cited as the Finance Act, 1900.

SECOND SCHEDULE.[1]

REPEALS.

Session and Chapter.	Short Title.	Extent of Repeal.
57 & 58 Vict., c. 30 -	The Finance Act, 1894 -	Section four, from "or which under a disposition" to "descendant of the deceased" and from "but if any benefit" to the end of the section, as respects persons dying after the passing of this Act.
59 & 60 Vict., c. 28	The Finance Act, 1896	Section seventeen as respects persons dying after the passing of this Act.

1 Section 18 and the Schedule were taken off the Statute Book by the Statute Law Revision Act, 1908, subject however, to a proviso under which the repeal effected by Section 18 was not affected.

REVENUE ACT, 1903.

[3 EDWARD 7, CHAPTER 46.]

PART IV. [14th August, 1903.

Miscellaneous.

14. Where, in the case of a person dying after the commencement of this Act, the fixed duty of thirty shillings or fifty shillings has been deposited or paid under section sixteen of the Finance Act, 1894 (which relates to the estate duty on small estates), and it is afterwards found that the gross value of the property on which estate duty is payable exceeds three hundred or five hundred pounds, as the case may be, the Commissioners of Inland Revenue, if they are satisfied that there were reasonable grounds for the original estimate of the value of the property, may (notwithstanding anything in section thirty-five of the Customs and Inland Revenue Act, 1881) allow an amount equal to the fixed duty deposited or paid to be deducted from the estate duty payable in respect of the property.

17. (2) This Act shall come into operation on the first day of September nineteen hundred and three, and may be cited as the Revenue Act, 1903.

FINANCE ACT, 1907.

[7 EDWARD 7 CHAPTER 13.]

PART III. [9th August, 1907.

Death Duties.

12. [The scale set out in the First Schedule to this Act shall, in the case of persons dying on or after the nineteenth day of April nineteen hundred and seven, be substituted for the scale of rates of estate duty set out in section seventeen of the Finance Act, 1894 (in this Part of this Act referred to as the principal Act):

Provided that where an interest in expectancy (within the meaning of Part I of the principal Act) in any property has before the nineteenth day of April nineteen hundred and seven been bonâ fide sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this section had not passed; and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.]

Repealed by F. A. 1910, *s.* 96 (1), *except as to persons dying before* 30*th April*, 1909. *See substituted scale in Second Schedule to that Act.*

13. The power of the Commissioners under sub-section (11) of section eight of the principal Act to remit the payment of estate duty or interest thereon shall apply to the other duties which are included in the definition of death duties in sub-section (3) of section thirteen of that Act as well as to estate duty.

14. The Commissioners may, if they think fit, entertain any application made for the purpose of sub-section (2) of section eleven of the principal Act (which relates to discharge from claims for estate duty), at whatever time the application is made; and, as respects any application so entertained, the provisions of that sub-section shall have effect notwithstanding that the application is made before the lapse of the two years mentioned in that sub-section.

15. The deduction to be allowed under section twenty-one of the Finance Act, 1896, in respect of death duties previously paid on property on which estate duty is payable shall, instead of being the amount of the duty paid or payable, be the amount which would have been payable on account of the duty if the duty were

calculated on the value of the property on which estate duty is payable : Provided that, if as respects any such deduction the person by whom the duty is payable requires the Commissioners, on the first delivery of his account, to calculate the deduction as if this section had not passed, the deduction shall be so calculated.

16. [In the case of persons dying on or after the nineteenth day of April nineteen hundred and seven, any settled property which would, under sub-section (2) of section twelve of the Finance Act, 1900, be aggregated with other property so as to enhance the rate of duty to the limited extent provided in that section, shall, for the purpose of the principal Act, instead of being so aggregated, be treated as an estate by itself.]

Repealed by F. A. 1927, *s.* 51, *so far as it related to persons dying after 29th July* 1927.

PART VII.

General.

30.[1] (1) The Acts specified in the Third Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

(2) Part III of this Act shall be construed together with the Finance Act, 1894.

(3) This Act may be cited as the Finance Act, 1907.

FIRST SCHEDULE.[2]

SCALES OF RATES OF ESTATE DUTY.

Where the Principal Value of the Estate					Estate Duty shall be payable at the Rate per cent. of
	£			£	
Exceeds	100	and does not exceed		500	One pound.
,,	500	,,	,,	1,000	Two pounds.
,,	1,000	,,	,,	10,000	Three pounds.
,,	10,000	,,	,,	25,000	Four pounds.
,,	25,000	,,	,,	50,000	Four pounds ten shillings.
,,	50,000	,,	,,	75,000	Five pounds.
,,	75,000	,,	,,	100,000	Five pounds ten shillings.
,,	100,000	,,	,,	150,000	Six pounds.
,,	150,000	,,	,,	250,000	Seven pounds.
,,	250,000	,,	,,	500,000	Eight pounds.
,,	500,000	,,	,,	750,000	Nine pounds.
,,	750,000	,,	,,	1,000,000	Ten pounds.
,,	1,000,000	,,	,,	1,500,000	Ten pounds on one million, and eleven pounds on the remainder.
,,	1,500,000	,,	,,	2,000,000	Ten pounds on one million and twelve pounds on the remainder.
,,	2,000,000	,,	,,	2,500,000	Ten pounds on one million, and thirteen pounds on the remainder.
,,	2,500,000	,,	,,	3,000,000	Ten pounds on one million, and fourteen pounds on the remainder.
,,	3,000,000	-	-	- -	Ten pounds on one million, and fifteen pounds on the remainder.

[1] Repealed *inter alia* F.A. 1894, s. 17, except as to persons dying before 19th April, 1907.
[2] Repealed by F. A. 1910, s. 96 (1), as to persons dying on or after 30th April, 1910.

FINANCE (1909-10) ACT, 1910.

[10 EDWARD 7 & 1 GEORGE 5, CHAPTER 8.]

[29th April, 1910.

Appeals.[1]

33. (1) Except as expressly provided in this Part of this Act, any person aggrieved may appeal within such time and in such manner as may be provided by rules made under this section against the first or any subsequent determination by the Commissioners of the total value or site value of any land; or against the amount of any assessment of duty under this Part of this Act; or against a refusal of the Commissioners to make any allowance or to make the allowance claimed, where the Commissioners have power to make such an allowance under this Part of this Act; or against any apportionment of the value of land or of duty or any assessment or apportionment of the consideration on any transfer or lease made by the Commissioners under this Part of this Act; or against the determination of any other matter which the Commissioners are to determine or may determine under this Part of this Act:

Provided that—

(*a*) an appeal shall not lie against a provisional valuation made by the Commissioners of the total or site value of any land except on the part of a person who has made an objection to the provisional valuation in accordance with this Act; and

(*b*) the original total value and the original site value and the site value as ascertained under any subsequent valuation shall be questioned only by means of an appeal against the determination by the Commissioners of that value where there is an appeal under this Act and shall not be questioned in any case on an appeal against an assessment of duty.

(2) An appeal under this section shall be referred to such one of the panel of referees appointed under this Part of this Act as may be selected in manner provided by rules under this section, and the decision of the referee to whom the matter is so referred shall be given in the form provided by rules under this section and shall, subject to appeal to the Court under this section, be final.

(3) The referee shall determine any matter referred to him in consultation with the Commissioners and the appellant, or any persons nominated by the Commissioners and the appellant respectively for this purpose, and may, if he thinks fit, order that any expenses incurred by the appellant be paid by the Commissioners, and that any such expenses incurred by the Commissioners be paid by the appellant.

Any order of the referee as to expenses may be made a rule of the High Court.

(4) Any person aggrieved by the decision of the referee may appeal against the decision to the High Court within the time and in the manner and on the conditions directed by Rules of Court (including conditions enabling the Court to require the payment of or the giving of security for any duty claimed); and sub-sections two, three, and four of section ten of the Finance Act, 1894, shall apply with reference to any such appeal:

Provided that where the total or site value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed five hundred pounds, the appeal under this section may be to the county court for the county

[1] *See* s. 60 (3), *infra*.

or place in which the appellant resides or the property is situate, and this section shall for the purpose of the appeal apply as if such county court were the High Court, and in every such case any party[1] shall have a right of appeal to the Court of Appeal.

(5) Provision shall be made by rules under this section with respect to the time within which and the manner in which an appeal may be made to a referee under this section, and with respect to the mode in which the referee to whom any reference is to be made is to be selected, and with respect to the form in which any decision of a referee is to be given, and with respect to any other matter for which it appears necessary or expedient to provide in order to carry this section into effect.

Those rules shall be made by the Reference Committee, subject to the approval of the Treasury.

The Reference Committee for England shall consist of the Lord Chief Justice of England, the Master of the Rolls, and the President of the Surveyors' Institution.

The Reference Committee for Scotland shall consist of the Lord President of the Court of Session, the Lord Justice Clerk, and the Chairman of the Scottish Committee of the Surveyors' Institution.

The Reference Committee for Ireland shall consist of the Lord Chief Justice of Ireland, the Master of the Rolls in Ireland, and the President of the Surveyors' Institution.

The President of the Surveyors' Institution may, if he thinks fit, appoint any person, being a member of the council of that institution and having special knowledge of valuation in Ireland, to act in his place as a member of the Reference Committee in Ireland.

34. (1) Such number of persons, being persons who have been admitted Fellows of the Surveyors' Institution, or other persons having experience in the valuation of land as may be appointed for England, Scotland, and Ireland, respectively, by the Reference Committee, shall form a panel of persons to act as referees for the purposes of this Part of this Act in England, Scotland, and Ireland, respectively, and persons having experience in the valuation of minerals shall be included in each panel.

(2) There shall be paid out of moneys provided by Parliament to every referee appointed under this section such fees or remuneration as the Treasury direct.

42. In the application of this Part of this Act to Scotland, unless the context otherwise requires,—

(1) "Court of Session" shall be substituted for "High Court": Provided that, for the purposes of appeals from the decisions of referees, the judges of the Court of Session named for the purpose of hearing appeals under the Valuation of Lands (Scotland) Acts shall be substituted for the High Court, subject to such regulations as may be prescribed by Act of Sederunt, and the appeal from such Judges shall be to the House of Lords, and in sub-sections (2), (3) and (4) of section ten of the Finance Act, 1894, as applied with reference to any such appeal, the said judges shall be substituted for the High Court. "Sheriff Court" shall be substituted for "County Court" and there shall be an appeal from the Sheriff Court to the said judges, whose decision in such case shall be final.

(2) Any order of a referee as to expenses shall be enforceable as a recorded decree abitral.

[1] Including the Commissioners of Inland Revenue, Revenue Act, 1911, s. 7.

PART III.

Death Duties.

54.[1] [The scale set out in the Second Schedule to this Act shall, in the case of persons dying on or after the thirtieth day of April nineteen hundred and nine, be substituted for the scale set out in the First Schedule to the Finance Act, 1907, as the scale of rates of estate duty, and two per cent. shall be substituted for one per cent. in section seventeen of the Finance Act, 1894 (in this Part of this Act referred to as the principal Act), as the rate of settlement estate duty.]

55. For the purpose of any claim to relief from estate duty under sub-section (2) of section five or sub-section (1) of section twenty-one of the principal Act, in the case of persons dying on or after the thirtieth day of April nineteen hundred and nine, payment of or liability to duty, whether the payment was made or the liability attached before, on, or after that date, shall not be deemed to be a payment of or liability to duty in respect of settled property if the payment was made or the liability attached in respect of an interest in expectancy in any property on the death of a person other than the settlor.

But see now F. A. 1914, *s.* 14.

56. (1) The Commissioners may, if they think fit, on the application of any person liable to pay estate duty or settlement estate duty or succession duty in respect of any real (including leasehold) property, accept in satisfaction of the whole or any part of such duty such part of the property as may be agreed upon between the Commissioners and that person.

(2) No stamp duty shall be payable on any conveyance or transfer of land to the Commissioners under this section.

(3) The Commissioners may hold any property transferred to them under this section and shall deal with it in such manner as Parliament may hereafter determine.

57. Where a debt or incumbrance has been incurred or created in whole or in part for the purpose of or in consideration for the purchase or acquisition or extinction, whether by operation of law or otherwise, of any interest in expectancy within the meaning of the principal Act[2] in any property passing or deemed to pass on the death of a person dying after the passing of this Act, and any person whose interest in expectancy is so purchased, acquired, or extinguished becomes (under any disposition made by, or through devolution of law from, or under the intestacy of, the deceased) entitled to any interest in that property, then in determining the value of the estate of the deceased for the purpose of estate duty no allowance shall be made in respect of such debt or incumbrance, and any property charged with any such debt or incumbrance shall be deemed to pass freed from that debt or incumbrance :

Provided that—

(*a*) If part only of such debt or incumbrance was incurred or created for such purpose or as such consideration as aforesaid, this provision shall apply to that part of such debt or incumbrance only ; and

(*b*) If a person whose interest in expectancy in the property so purchased, acquired, or extinguished becomes entitled to an interest in part only of that property, this provision shall apply only to such part of the debt or incumbrance as bears the same proportion to the whole debt or incumbrance as the value of the part of the property to an interest in which he becomes entitled bears to the value of the whole of that property.

---

[1] Repealed as to persons dying after 15th August, 1914, by F.A. 1914, s. 18 (1).
[2] *See* F.A. 1894, s. 22 (1) (*j*).

58. (1) Any legacy or succession duty which under the Stamp Act, 1815, or the Succession Duty Act, 1853, or any other Act, is payable at the rate of three per cent. shall be payable at the rate of five per cent., and any legacy or succession duty which under the said Acts is payable at the rate of five per cent. or six per cent. shall be payable at the rate of ten per cent. on the amount or value of the legacy or succession.

(2) The legacy and succession duty payable at the rate of one per cent. on the amount or value of any legacy or succession under the Stamp Act, 1815, and the Succession Duty Act, 1853, or any other Act, shall be levied and paid notwithstanding any repeal effected by or anything contained in the principal Act (except sub-section (3) of section sixteen thereof) or any other Act, and the duty shall also be levied and paid in cases where the person taking the legacy or succession is the husband or wife of the testator, intestate, or predecessor as in cases where the person taking the legacy or succession is a lineal ancestor or descendant of the testator, intestate, or predecessor:

Provided that the duty shall not be levied—

(*a*) Where the principal value of the property passing on the death of the deceased in respect of which estate duty is payable (other than property in which the deceased never had an interest, and property of which the deceased never was competent to dispose and which on his death passes to persons other than the husband or wife or a lineal ancestor or descendant of the deceased) does not exceed fifteen thousand pounds, whatever may be the value of the legacy or succession; or

(*b*) Where the amount or value of the legacy or succession together with any other legacies or successions derived by the same person from the testator, intestate, or predecessor does not exceed one thousand pounds, whatever may be the principal value of such property; or

(*c*) Where the person taking the legacy or succession is the widow or a child under the age of twenty-one years of the testator, intestate, or predecessor, and the amount or value of the legacy or succession together with any other legacies or successions derived by the same person from the testator, intestate, or predecessor, does not exceed two thousand pounds, whatever may be the principal value of such property.

(3) In this section, the expression "deceased" means, in the case of a legacy, the testator (including a person making a donation mortis causâ) or intestate, and, in the case of a succession arising[1] through devolution by law, the person on whose death the succession arises, and, in the case of a succession arising[1] under a disposition, the person on whose death the first succession thereunder arises; and the expression "legacy" includes residue and share of residue.

(4) This section shall take effect in the case of legacy duty only where the testator by whose will the legacy is given or the intestate on whose death the legacy duty is payable, dies on or after the thirtieth day of April nineteen hundred and nine, and, in the case of a succession arising through devolution by law, only where the succession arises on or after that date, and, in the case of a succession arising under a disposition, only if the first succession under the disposition arises on or after that date.

59. (1) In the case of a person dying on or after the thirtieth day of April nineteen hundred and nine, the period preceding the death of the deceased before which a disposition purporting to operate as an immediate gift inter vivos must have been made, or a surrender, assurance, divesting, or disposition must have been made or effected, in order that the property taken under the disposition, or affected by the

[1] *See* F. A. 1925, s. 24.

surrender, assurance, divesting, or disposition, may not be included as property passing on the death of the deceased, shall be three years instead of twelve months before the death, and accordingly paragraph (*a*) of sub-section (2) of section thirty-eight of the Customs and Inland Revenue Act, 1881 (as amended by section eleven of the Customs and Inland Revenue Act, 1889, and applied by paragraph (*c*) of sub-section (1) of section two of the principal Act), sub-section (3) of section two of the principal Act, and section eleven of the Finance Act, 1900, shall be read as if three years were substituted for twelve months :

Provided that this section shall not apply to any gift inter vivos, surrender, assurance, divesting, or disposition made or effected before the thirtieth day of April nineteen hundred and eight, or made or effected for public or charitable purposes.

(2) So much of paragraph (*c*) of sub-section (1) of section two of the principal Act and this section as makes gifts inter vivos property which is deemed to pass on the death of the deceased, shall not apply to gifts which are made in consideration of marriage, or which are proved to the satisfaction of the Commissioners to have been part of the normal expenditure of the deceased, and to have been reasonable, having regard to the amount of his income, or to the circumstances, or which, in the case of any donee, do not exceed in the aggregate one hundred pounds in value or amount.

(3) Where property taken under such a disposition or affected by such a surrender, assurance, divesting, or disposition as aforesaid is deemed to be property passing on the death of the deceased by reason only that the property was not, as from the date of the disposition, surrender, assurance, or divesting, retained to the entire exclusion of the deceased or a person who had an estate or interest limited to cease on the death of the deceased, and of any benefit to him by contract or otherwise, the property shall not be deemed to pass on the death of the deceased if subsequently, by means of the surrender of the benefit reserved or otherwise, it is enjoyed to the entire exclusion of the deceased or such other person as aforesaid, and of any benefit to him by contract or otherwise, for such period preceding the death of the deceased as is provided by this section.

And see F. A. 1914, *s.* 14, *proviso* (*c*).

60. (1) In the case of any person dying on or after the thirtieth day of April nineteen hundred and nine, the proviso to sub-section (5) of section seven of the principal Act (which relates to the estimation of the principal value of property for the purposes of estate duty) shall cease to have effect.

(2) In estimating the principal value of any property under sub-section (5) of section seven of the principal Act, in the case of any person dying on or after the thirtieth day of April nineteen hundred and nine, the Commissioners shall fix the price of the property according to the market price at the time of the death of the deceased, and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time :

Provided that where it is proved to the Commissioners that the value of the property has been depreciated by reason of the death of the deceased, the Commissioners in fixing the price shall take such depreciation into account.

(3) An appeal shall not lie under section ten of the principal Act, whether as originally enacted or as applied by any other enactment, where the question in dispute is a question of the value of any real (including leasehold) property, but, if any person is aggrieved by the decision of the Commissioners as to the value of any such property, he may appeal against the decision in manner prescribed by Part I of this Act, and the provisions as to appeals under that Part of this Act shall apply accordingly.[1]

[1] For the purposes of appeals under this sub-section, Art. 9 of the Government of Ireland (Adaptation of the Taxing Acts) Order 1922 (S. R. & O. 1922, No. 80), provides that there shall be a separate reference committee for Northern Ireland, and that sections 33 & 34 of the above Act shall have effect accordingly.

61. (1) Notwithstanding anything in the last preceding section, the proviso to sub-section (5) of section seven of the principal Act shall continue to apply to the valuation of property consisting of a tenancy from year to year, including any tenancy which is, or is deemed to be, subject to statutory conditions under the Land Law (Ireland) Acts, and for determining the gross value or the net value of property for the purpose of section sixteen of the principal Act.

(2) Where it is claimed that a fixed duty is payable in respect of any property under sub-section (1) of section sixteen of the principal Act as being property of a gross value not exceeding three hundred pounds or five hundred pounds, as the case may be, and such property includes property which is proved to the satisfaction of the Commissioners to be subject to a charge created for the purpose of securing unpaid purchase money, or money borrowed for the purpose of paying purchase money, or to be subject to or liable to be made subject to a charge for securing an advance made or to be made for the purpose of the purchase thereof, the value thereof for the purpose of determining the gross value of the property under the said section shall be taken to be its value subject to such charge or liability as aforesaid.

(3) Land subject to an annuity under the Land Purchase (Ireland) Acts shall be treated as real property for the purposes of sub-section (8) of section six of the principal Act (relating to the payment of estate duty by instalments).

(4) Where the property passing on the death of a person dying after the passing of this Act comprises the purchase money of land agreed to be sold under the Land Purchase (Ireland) Acts, but the purchase money has not been paid, the estate duty payable in respect of that purchase money may, at the option of the person liable to pay the same, be postponed until the purchase money is actually paid, and shall then become payable, but the person liable to pay the duty shall in the meantime pay annually interest on the amount of the duty payable at the rate of three per cent. per annum.

(5)[1] [Where an estate, in respect of which estate duty is payable on the death of a person dying after the passing of this Act, comprises land on which timber, trees, or wood are growing, the value of such timber, trees, or wood shall be aggregated with the other property passing on the death of the deceased for the purpose of determining the value of the estate and the rate of estate duty, but the estate duty which, but for this sub-section, would be payable on the principal value of the timber, trees, or wood shall not be payable thereon, but shall, at the rate so ascertained, be payable on the net moneys (if any), after deducting all necessary outgoings since the death of the deceased, which may from time to time be received from the sale of the timber, trees, or wood, when felled, during the period which may elapse until the land on the death of some other person again becomes liable or would, but for this sub-section, have become liable to estate duty, and the owners or trustees of such land shall account for and pay the same accordingly as and when such moneys are received, with interest at the rate of three per cent. per annum from the date when such moneys are received :]

Provided that if at any time the timber, trees, or wood are sold, either with or apart from the land on which they are growing, the amount of estate duty on the principal value thereof which, but for this sub-section, would have been payable on the death of the deceased, after deducting the amount (if any) of estate duty paid in respect of the timber, trees, or wood under this sub-section since that date, shall become payable.

This sub-section shall apply to succession duty payable in respect of woodlands in like manner as it applies to estate duty, except that nothing in this sub-section shall affect the rate of succession duty.

---

[1] The words in square brackets were repealed by F. A. 1912, s. 9.

63.[1] [In the case of any person dying on or after the thirtieth day of April nineteen hundred and nine, section twenty of the Finance Act, 1896 (which gives an exemption for objects of national, scientific, or historic interest), shall be extended so as to give an exemption from legacy and succession duty as well as from estate duty, and as so extended shall take effect whether the property in respect of which the exemption is given is settled or not, and as if the reference therein to national, scientific, or historic interest included a reference to artistic interest, and duty shall only become chargeable when the property is sold, and then only in respect of the last death on which the property passed.]

64. Where an interest in expectancy within the meaning of Part I of the principal Act in any property has, before the thirtieth day of April nineteen hundred and nine, been bonâ fide sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this Part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

95.[2] (1) All assessments or charges made or other things done before the passing of this Act with a view to the collection of any duty imposed by this Act shall have the same force and effect as if this Act had been in operation at the time when the assessment or charge was made or other thing done.

(2) Any payments made before the passing of this Act on account of any duty imposed thereby, and any payments of drawback made before the passing of this Act on account of any such duty, which would have been proper payments on account of duty or proper payments of drawback if this Act had been in force at the time, shall be deemed to be payments properly made under this Act, and, if treated as such before the passing of this Act, shall be deemed to have been properly so treated.

(3) The liability of any person to pay any sum on account of any duty imposed by this Act shall not be affected by the fact that he has, before the passing of this Act, paid either directly or by way of deduction any such sum if the sum so paid has been subsequently refunded to him, and any such sum may without prejudice to any other remedy be recovered as a debt due to His Majesty.

(4) Where any deduction which would have been a legal deduction if this Act had been in force has been made on account of any duty imposed by this Act, and the sum deducted has subsequently been made good by the person making the deduction, that person shall not be prevented from again making the deduction.

In such a case, and also in case where a person could have made a legal deduction if this Act had been in force on account of any duty imposed by this Act, but has not made it, the person who has made or could have made the deduction, as the case may be, shall be entitled, if there is no future payment from which the deduction may be made, to recover the sum as if it were a debt due from the person to whom the original deduction has been made good or as against whom the deduction could have been originally made.

(5) Any reference in this section to a duty imposed by this Act includes reference to a duty increased by this Act.

96. (1) The Acts specified in the Sixth Schedule to this Act are hereby repealed to the extent mentioned in the Third column of that Schedule.

(3) Part III of this Act shall be construed together with the Finance Act, 1894.

(7) This Act may be cited as the Finance (1909-10) Act, 1910.

---

[1] Repealed by F. A. 1930, s. 53 (8), except as regards persons dying before 1st August, 1930.
[2] S. L. R. A. 1927.

SECOND SCHEDULE.[1]

Scale of Rates of Estate Duty.

Where the Principal Value of the Estate						Estate Duty shall be payable at the Rate per cent. of
	£			£		
Exceeds	100	and does not exceed		500	-	1
„	500	„	„	1,000	-	2
„	1,000	„	„	5,000	-	3
„	5,000	„	„	10,000	-	4
„	10,000	„	„	20,000	-	5
„	20,000	„	„	40,000	-	6
„	40,000	„	„	70,000	-	7
„	70,000	„	„	100,000	-	8
„	100,000	„	„	150,000	-	9
„	150,000	„	„	200,000	-	10
„	200,000	„	„	400,000	-	11
„	400,000	„	„	600,000	-	12
„	600,000	„	„	800,000	-	13
„	800,000	„	„	1,000,000	-	14
„	1,000,000	- - - - - - -				15

[1] Repealed as to persons dying after 15th August, 1914, by F. A. 1914, s. 18 (1). See substituted scale in Schedule to that Act.

SIXTH SCHEDULE.[1]

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
36 Geo. 3, c. 52 -	The Legacy Duty Act, 1796	In section fourteen, so far as it applies to objects which appear to the Treasury to be of national, scientific, historic, or artistic interest, the words from "and given to" to "persons in succession"; the word "so," where it secondly occurs; the words from "not having any power" to "property yielding an income"; the words from "or shall come" to "having an absolute interest therein"; the word "same," where it fifthly occurs; the words from "as if the same had been" to "or dispose thereof"; and the words from "or who shall have" to "an absolute interest therein."
16 & 17 Vict., c. 51 -	The Succession Duty Act, 1853	Section twenty-three, except as respects persons dying before the passing of this Act.
59 & 60 Vict., c. 28 -	The Finance Act, 1896	In section twenty, the words from "and is settled" to "by different persons"; the words "by a person not competent to dispose of the same"; the words "or is in the possession of some person who is then competent to dispose of the same"; the words "and also the person being in possession and competent to dispose of the same"; and the words from "and in the case," to the end of the section, except as respects persons dying before the thirtieth day of April nineteen hundred and nine.
7 Edw. 7, c. 13 -	The Finance Act, 1907	In section two, the word "tobacco"; and section twelve, and the First Schedule, except as respects persons dying before the thirtieth day of April nineteen hundred and nine.

[1] S. L. R. A. 1927.

FINANCE ACT, 1911.

[1 & 2 GEORGE 5, CHAPTER 48.]

[16th December, 1911.

PART V.

Death Duties.

18. It is hereby declared that, in estimating for the purposes of sub-section (5) of section seven of the Finance Act, 1894, the principal value of any agricultural property which comprises cottages occupied by persons employed solely for agricultural purposes in connexion with the property, no account shall be taken of any value attributable to the fact that the cottage is suitable for the residential purposes of any persons other than agricultural labourers or workmen on the estate.

19.[1] [Sub-section (5) of Section sixty-one of the Finance (1909-10) Act, 1910 (which relates to duty in respect of timber, trees, or wood), shall have effect and shall be deemed always to have had effect as if the words "on or after the thirtieth day of April nineteen hundred and nine" were substituted for the words "after the passing of this Act."]

FINANCE ACT, 1912.

[2 & 3 GEORGE 5, CHAPTER 8.]

[7th August, 1912.

9. Where an estate, in respect of which estate duty is payable on the death of a person dying on or after the thirtieth day of April nineteen hundred and nine, comprises land on which timber, trees, wood, or underwood are growing, the value of such timber, trees, wood, or underwood shall not be taken into account in estimating the principal value of the estate or the rate of estate duty, and estate duty shall not be payable thereon, but shall, at the rate due to the principal value of the estate, be payable on the net moneys (if any), after deducting all necessary outgoings since the death of the deceased, which may from time to time be received from the sale of timber, trees, or wood when felled or cut during the period which may elapse until the land, on the death of some other person, again becomes liable or would, but for this sub-section, have become liable to estate duty, and the owners or trustees of such land shall account for and pay the same accordingly as and when such moneys are received, with interest at the rate of three per cent. per annum from the date when such moneys are received.

This section shall take effect in substitution for the first paragraph of sub-section (5) of section 61 of the Finance (1909-10) Act, 1910,[2] [and that paragraph and section nineteen of the Finance Act, 1911, are hereby repealed].

FINANCE ACT, 1914.

[4 & 5 GEORGE 5, CHAPTER 10.]

[31st July, 1914.

PART III.

Death Duties.

12.[3] The scale set out in the First Schedule to this Act shall, in the case of persons dying after the fifteenth day of August, nineteen hundred and fourteen, be substituted for the scale of rates of estate duty set out in the Second Schedule to the Finance (1909-10) Act, 1910, as the scale of rates of estate duty.

---

1 Repealed by F. A. 1912, s. 9. 2 S. L. R. A. 1927.
3 New scale substituted as to persons dying after 30th July 1919, by F. A. 1919, s. 29.

13. (1) The amount of estate duty payable on an estate at the rate applicable thereto under the scale of rates of duty shall, where necessary, be reduced so as not to exceed the highest amount of duty which would be payable at the next lower rate, with the addition of the amount by which the value of the estate exceeds the value on which the highest amount of duty would be so payable at the lower rate.

(2) Where the net value of the property real and personal in respect of which estate duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, exceeds one thousand pounds, the amount of legacy and succession duty payable in respect of the property shall not exceed the amount by which the net value of the property as estimated for the purposes of estate duty exceeds one thousand pounds.

14. Any relief from the payment of estate duty given by sub-section (2) of section five, or by sub-section (1) of section twenty-one of the Finance Act, 1894 (which relate to settled property), or by sub-section (16) of section twenty-three of that Act (which relates to entailed estates in Scotland) shall cease in the case of any person dying after the fifteenth day of August, nineteen hundred and fourteen, and settlement estate duty shall not be levied in the case of persons dying after the eleventh day of May, nineteen hundred and fourteen:

Provided that—

(*a*) nothing in this section shall affect the relief given by the above-mentioned provisions of the Finance Act, 1894, in cases where, before or after the passing of this Act, estate duty has been paid or any of the duties specified in sub-section (1) of section twenty-one of that Act have, either before or after the passing of this Act, been paid or are payable upon the death of one of the parties to a marriage, so far as respects the payment of estate duty on the death of the other party to the marriage; and

(*b*) on the first occasion on which estate duty becomes payable in respect of any property which would not have been payable but for this section, the amount of settlement estate duty, if any, which has been paid in respect of that property, shall be allowed against the amount of estate duty payable on that occasion, and if it exceeds that amount, the excess shall be repaid to the estate, and in addition, a sum equal to simple interest on the said amount of settlement estate duty calculated at the rate of three per cent. per annum from the fifteenth day of August, nineteen hundred and fourteen, up to the date of the occasion shall be paid to the several persons or their representatives who would have been entitled to the income arising from that amount, if that amount had on the fifteenth day of August, nineteen hundred and fourteen, been added to the capital of the settled property and shall be divided amongst those persons or their representatives according to the several interests they would have had in that income; and

(*c*) Section eleven of the Finance Act, 1900, as amended by section fifty-nine of the Finance (1909-10) Act, 1910, shall not operate on any such surrender, assurance, divesting, or disposition as is mentioned in the said section eleven made by any person between the fifteenth day of August, nineteen hundred and fourteen, and the first day of April, nineteen hundred and fifteen, so as to make any estate duty payable on the death of that person which would not have been payable but for this section.

15. Where the Commissioners of Inland Revenue are satisfied that estate duty has become payable on any property consisting of land or a business (not being a business carried on by a company), or any interest in land or such a business,

passing upon the death of any person, and that subsequently within five years estate duty has again become payable on the same property or any part thereof passing on the death of the person to whom the property passed on the first death, the amount of estate duty payable on the second death (if that death occurs after the passing of this Act) in respect of the property so passing shall be reduced as follows:—

Where the second death occurs within one year of the first death, by fifty per cent.;

Where the second death occurs within two years of the first death, by forty per cent.;

Where the second death occurs within three years of the first death, by thirty per cent.;

Where the second death occurs within four years of the first death, by twenty per cent.;

Where the second death occurs within five years of the first death, by ten per cent.;

Provided that where the value, on which the duty is payable, of the property on the second death exceeds the value, on which the duty was payable, of the property on the first death, the latter value shall be substituted for the former for the purpose of calculating the amount of duty on which the reduction under this section is to be calculated.

And see Death Duties (Killed in War) Act, 1914, *s.* 1 (3).

16. Where an interest in expectancy within the meaning of Part I of the Finance Act, 1894, in any property has, before the eleventh day of May, nineteen hundred and fourteen, been bonâ fide sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this Part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

PART V.

Miscellaneous.

18. (1) The enactments specified in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

(2) Part III of this Act shall be construed together with the Finance Act, 1894.

(3) This Act may be cited as the Finance Act, 1914.

FIRST SCHEDULE.[1]

Scale of Rates of Estate Duty.

Where the Principal Value of the Estate				Estate Duty shall be Payable at the Rate per cent. of
	£		£	
Exceeds	100	and does not exceed	500	1
„	500	„ „	1,000	2
„	1,000	„ „	5,000	3
„	5,000	„ „	10,000	4
„	10,000	„ „	20,000	5
„	20,000	„ „	40,000	6
„	40,000	„ „	60,000	7
„	60,000	„ „	80,000	8
„	80,000	„ „	100,000	9
„	100,000	„ „	150,000	10
„	150,000	„ „	200,000	11
„	200,000	„ „	250,000	12
„	250,000	„ „	300,000	13
„	300,000	„ „	350,000	14
„	350,000	„ „	400,000	15
„	400,000	„ „	500,000	16
„	500,000	„ „	600,000	17
„	600,000	„ „	800,000	18
„	800,000	„ „	1,000,000	19
„	1,000,000			20

SECOND SCHEDULE.[2]

Enactments Repealed.

Session and Chapter.	Short Title.	Statutes Repealed.
57 & 58 Vict., c. 30	The Finance Act, 1894	Sub-sections (1) and (4) of section five; in section seventeen the words "the rate of the settlement estate duty where the property is settled shall be two per cent."; sub-section (4) of section twenty-one.
10 Edw. 7, c. 8	The Finance (1909-10) Act, 1910.	Section 54 and the Second Schedule as respects persons dying after the fifteenth day of August, one thousand nine hundred and fourteen. . . .

[1] New scale substituted as to persons dying after 30th July, 1919, by F. A. 1919, s. 29.
[2] S. L. R. A. 1927.

DEATH DUTIES (KILLED IN WAR) ACT, 1914.

[4 & 5 GEORGE 5, CHAPTER 76.]

[31st August, 1914.

1. (1) Section fourteen of the Finance Act, 1900 (which relates to the remission of death duties in case of persons killed in war), shall have effect as respects the present war[1] as if it applied to property passing to lineal ancestors as well as to property passing to the widow or lineal descendants, and as if the amount of the duty to be remitted or repaid under that section were, instead of the amount therein mentioned, the following amounts :—

(*a*) Where the value for the purpose of estate duty of the property passing to the widow, lineal descendants, or lineal ancestors does not exceed five thousand pounds, the whole of the death duties leviable in respect of that property ; and

(*b*) Where the said value exceeds five thousand pounds—

(i) in respect of the first five thousand pounds, the whole of the death duties ; and

(ii) so much of the duties leviable in respect of the remainder as exceeds the sum which, if accumulated at compound interest at the rate of three per centum per annum from the date of death with half-yearly rests would, at the expiration of the period of the normal expectation of life of a person of the age of the deceased at the time of death (calculated in accordance with the Tables of Mortality of Government Life Annuitants, 1912), amount to the whole of the duties so leviable.

(2) The benefits of the relief given by this section as respects the first five thousand pounds shall be apportioned rateably among the several persons who would otherwise bear the duties remitted or repaid according to the amounts which they would so bear and without regard to their respective rights of priority.

(3) Where the relief in respect of estate duty afforded to the widow, lineal descendants, or lineal ancestors by section fifteen of the Finance Act, 1914, would be greater than that afforded to them in respect of estate duty by this section, the relief in respect of estate duty shall be that under the said section fifteen and not that under this section, but in other cases the relief afforded by the said section fifteen shall not apply to any estate duty to which this section applies.

2. (1) Where the Commissioners of Inland Revenue are satisfied that estate duty has become payable on any property passing on the death of any person to which section one of this Act applies, and that subsequently estate duty has again become payable on the same property or any part thereof passing on the death of some other person to which section one of this Act applies, the whole of the estate duty payable on such subsequent death in respect of the property so passing shall be remitted, or, in case the duty has been paid, repaid, and the property shall not be aggregated with any other property passing on such subsequent death for the purpose of determining the rate of estate duty.

(2) This section shall apply whether or not on any such death any property passes to the widow or lineal descendants or lineal ancestors of the deceased.

3. This Act may be cited as the Death Duties (Killed in War) Act, 1914.

And see extensions by F. A. 1915, *s.* 46, *F. A.* 1917, *s.* 29, *F. A.* 1918, *s.* 44, *F. A.* 1919, *s.* 31, *F. A.* 1921, *s.* 43, *and F. A.* 1924, *s.* 38.

THE AMERICAN LOAN ACT, 1915.

[5 & 6 GEORGE 5, CHAPTER 81.]

[13th October, 1915.

1. *Sub-sections* (1) *and* (2) *authorise the Treasury to raise a loan in the United States of America.*

[1] *The War legally came to an end on the* 31*st August*, 1921, *by Order in Council made in pursuance of the Termination of the Present War* (*Definition*) *Act*, 1918, *except as to Turkey, for which the date was ordered to be* 6*th August*, 1924.

(3) Any securities issued for the purposes of any such loan in the United States of America, except where they are held by persons domiciled in the United Kingdom, or by British subjects ordinarily resident in the United Kingdom, shall not be liable to any taxation, present or future.

2. This Act may be cited as the American Loan Act, 1915.

THE FINANCE (No. 2) ACT, 1915.

[5 & 6 GEORGE 5, CHAPTER 89.]

[23rd December, 1915.

PART IV.

46. Section 2 of the Death Duties (Killed in War) Act, 1914 (which provides for the remission of estate duty in respect of property passing more than once owing to deaths caused by the war), shall apply, and shall be deemed always to have applied, to succession and legacy duty as well as to estate duty.

47.[1] The Treasury may, if they think fit, during the continuance of the present war[2] and a period of twelve months thereafter, issue any securities which they have power to issue for the purpose of raising any money or any loan with a condition that neither the capital nor the interest thereof shall be liable to any taxation, present or future, so long as it is shown in manner directed by the Treasury that the securities are in the beneficial ownership of persons who are neither domiciled nor ordinarily resident in the United Kingdom, and securities issued with such a condition shall be exempt accordingly.

48. Where the holder of any Government stock dies, the production of probate, confirmation, or letters of administration granted by any court in the United Kingdom having authority to grant the same shall be sufficient authority to the Banks of England and Ireland, to the National Debt Commissioners, to the Postmaster-General and to any savings bank authority to transfer the stock to the person to whom the probate, confirmation or letters of administration were granted, or as directed by that person.

The expression "Government stock" has the same meaning as in the Savings Bank Act, 1893, as amended by any subsequent enactment.

And see F. A. 1916, *s.* 67, *and Supreme Court of Judicature (Consolidation) Act* 1925, *s.* 169.

51. (3) This Act may be cited as the Finance (No. 2) Act, 1915.

FINANCE ACT, 1916.

[6 & 7 GEORGE 5, CHAPTER 24.]

[19th July, 1916.

63. Any securities issued in the United States of America by a municipal corporation, county council, or other local authority in the United Kingdom for the purpose of raising any money which they are authorised to borrow, if issued under the authority of the Treasury, shall not be liable to any taxation present or future, except where they are held by persons domiciled in the United Kingdom or by British subjects ordinarily resident in the United Kingdom. The expression "local authority" in this section includes the Metropolitan Water Board and any other public body which is recognised as a local authority for the purpose of this section by the Local Government Board.

67. Where any Government stock is transferred by virtue of s. 48 of the Finance (No. 2) Act, 1915, on the authority of any probate, confirmation, or letters

---

[1] S. L. R. A. 1927. [2] *See* footnote to Death Duties (Killed in War) Act, 1914, s. 1.

of administration, or by virtue of this Act on the authority of any order or decree of any court, the Bank of England or Ireland, the National Debt Commissioners, the Postmaster-General, or the savings bank authority, as the case may be, shall be indemnified and protected, notwithstanding any defect or circumstance whatsoever affecting the validity of such probate, confirmation, or letters of administration, or of such order or decree.

69. (3) This Act may be cited as the Finance Act, 1916.

FINANCE ACT, 1917.

[7 & 8 GEORGE 5, CHAPTER 31.]

[2nd August, 1917.

PART IV.

29. Section 14 of the Finance Act, 1900, as extended by the Death Duties (Killed in War) Act, 1914, and section 46 of the Finance (No. 2) Act, 1915, shall apply in the case of a master or a member of the crew of a ship or a fishing boat dying, whether before or after the passing of this Act, from causes arising out of the operations of the present war[1] and within twelve months from the occurrence to which death is due, in like manner as it applies in the case of a person dying from such wounds, accident, or disease as are mentioned in the said section 14, with this qualification, that the Treasury shall act on the recommendation of the Board of Trade instead of on that of the Secretary of State or the Admiralty.

34. (1) The Treasury may by regulations prescribe as securities to be accepted in payment of any death duty, or excess profits duty, or munitions exchequer payments, any stock or bonds forming part of any issue made for raising money in connection with the present war, and any such regulations may specify different securities in respect of different duties and payments, and may prescribe the limitations and conditions subject to which any securities will be accepted, and any person from whom any sum is due on account of any death duty or excess profits duty or munitions exchequer payments may pay that sum or any part thereof by means of the transfer, in accordance with and subject to the provisions of such regulations as aforesaid, to the Commissioners of Inland Revenue of an appropriate amount (ascertained as hereinafter mentioned) of any stock or bonds authorised by the regulations.

(2) Any stock or bonds so transferred shall be accepted by the Commissioners of Inland Revenue in satisfaction of the amount.

(3)[2] Any stock or bonds so transferred shall be deemed to mature for payment on the date of the transfer, but the principal payable on maturity shall be deemed to be a sum equal to the price of issue, and the principal and interest of the stock or bonds when received by the Commissioners of Inland Revenue shall be brought to account as revenue in such manner as the Treasury may direct.

(4) Stock or bonds so transferred shall for the purposes of this section be valued at the price of issue with the addition of any interest accrued due at the date of transfer but then remaining unpaid, after deducting the amount of any interest which may be receivable by the transferor after that date.

(5) For the purposes of this section interest shall be deemed to accrue from day to day.

(6) Section 61 of the Finance Act, 1916, is hereby repealed.

37. *Contains provisions facilitating dealings with Government stock.*

38. Part IV of this Act shall be construed together with the Finance Act, 1894.

(2) This Act may be cited as the Finance Act, 1917.

---

1 *See* footnote, to Death Duties (Killed in War) Act, 1914, s. 1.

2 *See* F. A. 1918, s. 42, for words added to sub-secs. (3) and (4) of s. 34, and War Loan Act 1919.

THE FINANCE ACT, 1918.

[8 & 9 GEORGE 5, CHAPTER 15.]

[30th July, 1918.

38. *As extended by s. 5 of the War Loan Act, 1919, and s. 52 of the F. A. 1930, makes provision for facilitating dealing with small amounts of Government stock belonging to deceased persons, including sums of stock not exceeding £500, belonging to any person resident in a British possession who has died on actual military service.*

42. Section 34 of the Finance Act, 1917, shall have effect as though there were inserted therein after the words "price of issue," in sub-section (3) and sub-section (4) thereof, the words "or such other price as was specified in the conditions subject "to which the stock or bonds were issued as the price at which the stock or bonds "were to be valued for the purposes of this section."

44. The Death Duties (Killed in War) Act, 1914 (which extends as respects the present war, the relief from death duties given by section 14 of the Finance Act, 1900), shall have effect, and shall be deemed always to have had effect, as though the references therein to lineal ancestors included references to brothers and sisters and the descendants of brothers and sisters of the deceased.

45. (3) This Act may be cited as the Finance Act, 1918.

THE FINANCE ACT, 1919.

[9 & 10 GEORGE 5, CHAPTER 32.]

PART III. [31st July, 1919.

Death Duties.

29.[1] The scale set out in the Third Schedule to this Act shall, in the case of persons dying after the commencement of this Act, be substituted for the scale set out in the First Schedule to the Finance Act, 1914, as the scale of rates of estate duty :

Provided that, where an interest in expectancy within the meaning of Part I of the Finance Act, 1894, in any property has, before the 30th day of April 1919 been bonâ fide sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this Part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

30. Section 18 of the Finance Act, 1896 (which determines the rate of interest on death duties) shall, in its application to interest accruing due after the commencement of this Act, have effect as though four per cent. were substituted for three per cent. as the rate of interest per annum.

31. Section 14 of the Finance Act, 1900 (which relates to the remission of death duties in case of persons killed in war), and any enactment amending or extending that section, shall, in their application to the present war,[2] have effect and be deemed always to have had effect as though—

(*a*) three years were substituted for twelve months wherever that expression occurs ; and

(*b*) in the said section fourteen the expression " wounds inflicted, accident "occurring or disease contracted while on active service against "an enemy " included wounds inflicted, accident occurring or disease contracted in the course of operations arising directly out of the present war, but after its termination.

38. (1) Part III of this Act shall be construed together with the Finance Act, 1894.

(2) This Act may be cited as the Finance Act, 1919.

---

[1] New scale substituted as to persons dying on or after 30th June, 1925, by F. A. 1925, s. 22.

[2] *See* footnote to Death Duties (Killed in War) Act, 1914, s. 1.

THIRD SCHEDULE.[1]

SCALE OF RATES OF ESTATE DUTY.

Where the Principal Value of the Estate					Estate Duty shall be payable at the Rate per cent. of
	£		£		
Exceeds	100	and does not exceed	500		1
„	500	„ „	1,000		2
„	1,000	„ „	5,000		3
„	5,000	„ „	10,000		4
„	10,000	„ „	15,000		5
„	15,000	„ „	20,000		6
„	20,000	„ „	25,000		7
„	25,000	„ „	30,000		8
„	30,000	„ „	40,000		9
„	40,000	„ „	50,000		10
„	50,000	„ „	60,000		11
„	60,000	„ „	70,000		12
„	70,000	„ „	90,000		13
„	90,000	„ „	110,000		14
„	110,000	„ „	130,000		15
„	130,000	„ „	150,000		16
„	150,000	„ „	175,000		17
„	175,000	„ „	200,000		18
„	200,000	„ „	225,000		19
„	225,000	„ „	250,000		20
„	250,000	„ „	300,000		21
„	300,000	„ „	350,000		22
„	350,000	„ „	400,000		23
„	400,000	„ „	450,000		24
„	450,000	„ „	500,000		25
„	500,000	„ „	600,000		26
„	600,000	„ „	800,000		27
„	800,000	„ „	1,000,000		28
„	1,000,000	„ „	1,250,000		30
„	1,250,000	„ „	1,500,000		32
„	1,500,000	„ „	2,000,000		35
„	2,000,000				40

THE WAR LOAN ACT, 1919.

[9 & 10 GEORGE 5, CHAPTER 37.]

[15th August, 1919.

Amends s. 34 (3), F. A. 1917, and 38 (2) F. A. 1918.

[1] New scale substituted as to persons dying on or after 30th June, 1925, by F. A. 1925, s. 22

FINANCE ACT, 1921.

[11 & 12 GEORGE 5, CHAPTER 32.]

[4th August, 1921.

PART IV.

Death Duties.

43. (1) The provisions of section fourteen of the Finance Act, 1900, under which, as amended by subsequent enactments, relief is given in respect of the death duties payable on property passing on the death of certain persons killed in the present war,[1] shall, subject to the provisions of this section, have effect in the case of persons, being persons to whom this section applies, who die from causes arising directly out of the present state of disorder in Ireland as they have effect in the case of the persons killed as aforesaid.

(2) The persons to whom this section applies are the members of any of His Majesty's Forces, judges, magistrates, members of any police force in Ireland (including special constables), and members of His Majesty's Civil Service, serving in Ireland.

(3) The Treasury shall, for the purposes of this section, act in the case of persons who are not members of His Majesty's Forces on the recommendation of the Lord Lieutenant of Ireland.

(4) This section shall apply in the case of any person dying from any such cause as aforesaid arising at any time after the 31st December, 1918, and before such date as His Majesty may by Order in Council fix.

44.[2] [Notwithstanding anything in section twenty of the Finance Act, 1896 (which as amended by section sixty-three of the Finance (1909-10) Act, 1910, gives exemption from estate duty, legacy duty, and succession duty to objects of national, scientific, historic and artistic interest so long as they remain unsold), or in the said section 63, duty shall not become chargeable on the sale, after the passing of this Act, of any property in respect of which exemption has been allowed under those sections, if the sale is to the National Gallery, British Museum, or other similar national institution, any university, any county council, any municipal corporation, in the United Kingdom, or the National Art Collections Fund.]

63. *Contains provisions for cases where documents relating to death duties have been lost, destroyed or damaged.*

65. (1) Part IV. of this Act shall be contrued together with the Finance Act, 1894.

(2) This Act may be cited as the Finance Act, 1921.

FINANCE ACT, 1922.

[12 & 13 GEORGE 5, CHAPTER 17.]

[20th July, 1922.

PART II.

30. (1) Where a charity is entitled to the residuary estate of any testator and the residue or some part thereof is not paid to the charity until after the expiration of one year after the death of the testator, there shall be treated as being income of the charity for the purposes of the Income Tax Acts such portion of the income, if any, which accrued to the estate in respect of the period between the expiration of the said year and the date of payment as would have accrued to the charity if the residue, or the said part of the residue, had been paid to the charity immediately after the expiration of the said year and the assets constituting

[1] *See* footnote to Death Duties (Killed in War) Act, 1914, s.1.

[2] Repealed by F. A. 1930, s. 53 (8), except as regards persons dying before 1st August, 1930.

the estate (excluding any part thereof specifically bequeathed or devised) on that date had then been apportioned rateably as between the creditors, legatees (other than specific legatees), and persons entitled to the residue.

(2) *Empowers the Special Commissioners to determine any questions under this section on appeal.*

(3) In this section the expression "charity" means any body of persons or trust established for charitable purposes only, and references to the residuary estate of a testator include references to a share of residuary estate.

PART V.

44. Where any land or chattels settled by Act of Parliament or Royal grant pass on the death of any person, any estate duty payable in respect thereof, or of any interest therein, under sub-section (5) of section five of the Finance Act, 1894, may, at the option of the person authorised or required to pay the same, and notwithstanding anything in the said section or in the Act of Parliament or Royal Grant settling the said land or chattels, be treated as a charge on and be raised and paid out of the *corpus* of such land or chattels, and the provisions of section nine of the Finance Act, 1894, dealing with the charge of estate duty and the facilities for raising that duty shall apply.

The option given by this section shall be exercisable in any case in which estate duty in respect of land or chattels, or any interest therein, to which sub-section (5) of section five of the Finance Act, 1894, applies, is unpaid at the date of the passing of this Act, irrespective of the date of the death which gave rise to the claim for that duty.

45. (1) Section twenty of the Finance Act, 1894 (which relates to payment of death duties where death duties are payable in certain British Possessions), shall have effect as if the Malay States were a British Possession within the meaning of that section.

(2) For the purposes of this section, "the Malay States" means the Federated Malay States and Johore, Kedah, Perlis, Kelantan, Trengganu, and Brunei.

49. (2) This Act may be cited as the Finance Act, 1922.

(3) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

FINANCE ACT, 1923.

[13 & 14 GEORGE 5, CHAPTER 14.]

[18th July, 1923.

PART IV.

37. (1) Where property situate out of Great Britain is bequeathed to or settled on different persons in succession and legacy duty or succession duty has, whether before or after the commencement of this Act, been paid thereon, such duty shall for the purposes of sub-section (2) of section two of the Finance Act, 1894 (which provides that property situate out of Great Britain shall be deemed to be included in property passing on the death of the deceased only if legacy or succession duty is payable in respect thereof, or would be so payable but for the relationship of the person to whom it passes), be deemed to be payable in respect of the property on the death of each of those persons in succession, notwithstanding that the whole amount of the duty was paid on one death only as in the case of a legacy to one person.

(2) This section shall apply in the case of property passing on the death of a person who dies on or after the sixteenth day of April, nineteen hundred and twenty-three.

39. (2) This Act may be cited as the Finance Act, 1923.

(3) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

FINANCE ACT, 1924.

[14 & 15 George 5, Chapter 21.]

[1st August, 1924.

PART III.

38. (1) All such relief as might have been given under Section fourteen of the Finance Act, 1900, as amended by subsequent enactments (but not including section 2 of the Death Duties (Killed in War) Act, 1914), in respect of the death duties payable on property passing on the death of certain persons killed in the late war shall be given in respect of the death duties payable on the death of persons, being persons to whom this section applies, who die from wounds inflicted, accidents occurring, or disease contracted while on active service against an enemy, or on service which is of a warlike nature, or which, in the opinion of the Treasury, otherwise involves the same risks as active service.

(2) The persons to whom this section applies are the members of His Majesty's Forces who are subject either to the Naval Discipline Act or to military law, whether as officers, non-commissioned officers, or soldiers, under Part V. of the Army Act, or to the Air Force Act.

(3) This section shall apply in the case of any persons dying from any such causes aforesaid arising after the thirty-first day of August, nineteen hundred and twenty-one.

41. (2) This Act may be cited as the Finance Act, 1924.

(3) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

THE LAW OF PROPERTY ACT, 1925.

[15 & 16 George 5, Chapter 20.]

[9th April, 1925.

PART I.

* * * * * * * * *

Death Duties.

16.—(1) A personal representative shall be accountable for all death duties which may become leviable or payable on the death of the deceased in respect of land (including settled land) which devolves upon him by virtue of any statute or otherwise.

(2) In every other case the estate owner (other than a purchaser who acquires a legal estate after the charge for death duties has attached and free from such charge), shall be accountable for all the duties aforesaid which become leviable or payable in respect of his estate in the land or any interest therein capable of being over-reached by his conveyance, being a conveyance to a purchaser made under the Settled Land Act, 1925, or pursuant to a trust for sale.

(3) For the purpose of raising the duty, and the costs of raising the same, the personal representative or other person accountable as aforesaid shall have all the powers which are by any statute conferred for raising the duty.

(4) Nothing in this Act shall alter any duty payable in respect of land, or impose any new duty thereon, or affect the remedies of the Commissioners of Inland Revenue against any person other than a purchaser or a person deriving title under him.

(5) Notwithstanding that any duties are by this section made payable by the personal representative or other person aforesaid, nothing in this Part of this Act shall affect the liability of the persons beneficially interested or their respective interests in respect of any duty, and they shall accordingly account for or repay the same and any interest and costs attributable thereto to the said Commissioners or to the personal representative or other person accountable as aforesaid, as the case may require.

(6) Nothing in this Part of this Act shall impose on a personal representative, tenant for life, statutory owner, trustee for sale, or other person in a fiduciary position, as such, any liability for payment of duty, in excess of the assets (including land) vested in him or in the trustees of the settlement which may for the time being be available in his hands or in the hands of such trustees for the payment of the duty or which would have been so available but for his or their own neglect or default, or impose a charge for duties on leasehold land, or render a mortgagee liable in respect of any charge for duties which is not paramount to his mortgage.

(7) The said Commissioners, on being satisfied that a personal representative or other person accountable has paid or commuted or will pay or commute all death duties for which he is accountable in respect of the land or any part thereof, shall, if required by him, give a certificate to that effect, which shall discharge from any further claim for such duty the land to which the certificate extends, and the production of such certificate to the land registrar or other proper officer shall be a sufficient authority to enable him to cancel any land charge registered in respect of the duty so far as it affects the land to which the certificate extends.

17.—(1) Where a charge in respect of death duties is not registered as a land charge,[1] a purchaser of a legal estate shall take free therefrom, unless the charge for duties attached before the commencement of this Act and the purchaser had notice of the facts giving rise to the charge.

(2) Where a charge in respect of death duties is not registered as a land charge, the person who conveys a legal estate to a purchaser, and the proceeds of sale, funds, and other property (if any) derived from the conveyance and the income thereof shall (subject as in this Act provided) be or remain liable in respect of and stand charged with the payment of the death duties the charge for which is over-reached by the conveyance, together with any interest payable in respect of the same.

(3) Notwithstanding that any death duties may be payable by instalments, on a conveyance of a legal estate by way of sale exchange or legal mortgage all death duties payable in respect of the land dealt with and remaining unpaid shall, if the charge for the duties is over-reached by such conveyance, immediately become payable and carry interest at the rate of four pounds per centum per annum from the date of the conveyance :

Provided that, where by reason of this subsection an amount is paid or becomes payable for duties and interest in excess of the amount which would have been payable if the duties had continued to be paid by instalments, such excess shall be repaid or allowed as a deduction by the Commissioners of Inland Revenue.

(4) Except in the case of a conveyance to a purchaser, a conveyance shall take effect subject to any subsisting charge or liability for payment of the duties and interest, if any, notwithstanding that the charge for duties may not have been registered.

(5) This section does not apply to registered land.[2]

18.—(1) Capital money liable to be laid out in the purchase of land to be settled in the same manner as the land in respect of which any death duties may have become payable, and personal estate held on the same trusts as the proceeds

[1] As to the registration as a land charge of a charge acquired by the Commissioners of Inland Revenue for any death duty, *see* L. C. A. 1925, s. 10.

[2] As to registered land, *see* L. R. A. 1925, s. 73.

of sale of land, being land held on trust for sale in respect of which any such duties may have become payable, may, by the direction of the tenant for life, statutory owner, or trustee for sale who is accountable, and although the duty is only payable in respect of an interest which is or is capable of being over-reached by a conveyance to a purchaser, be applied in discharging all or any of the duties aforesaid and the costs of discharging the same.

(2) Where the duties would not, except by virtue of the last subsection, be payable out of the capital money or personal estate aforesaid—

(*a*) the amount so paid shall be repaid by the person liable for the duty to the trustees of the settlement or the trustees for sale by the like instalments and at the like rate of interest by and at which the unpaid duty and the interest thereon might have been paid, or, where the land has been conveyed to a purchaser, would have been paid if the land had not been so conveyed;

(*b*) the interest of the person so liable, remaining subject to the settlement of the land or of the proceeds of sale, shall stand charged with the repayment of the instalments and the interest aforesaid;

(*c*) the trustees of the settlement or the trustees for sale shall be entitled to recover and receive any excess of duty which may become repayable by the said Commissioners.

PART XII.

Construction, Jurisdiction, and General Provisions.

205.—(1) In this Act unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

* * * * * * * * *

(ii) "Conveyance" includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will; "convey" has a corresponding meaning; and "disposition" includes a conveyance and also a devise, bequest, or an appointment of property contained in a will; and "dispose of" has a corresponding meaning;

* * * * * * * * *

(iv) "Death duty" means estate duty, succession duty, legacy duty, and every other duty leviable or payable on a death;

(v) "Estate owner" means the owner of a legal estate, but an infant is not capable of being an estate owner;

* * * * * * * * *

(ix) "Land" includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land; but not an undivided share in land; and "mines and minerals" include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same but not an undivided share thereof; and "manor" includes a lordship, and reputed manor or lordship; and "hereditament" means any real property which on an intestacy occurring before the commencement of this Act might have devolved upon an heir;

(x) "Legal estates" mean the estates, interests and charges, in or over land (subsisting or created at law) which are by this Act authorised

to subsist or to be created as legal estates; "equitable interests" mean all the other interests and charges in or over land or in the proceeds of sale thereof; an equitable interest "capable of subsisting as a legal estate" means such as could validly subsist or be created as a legal estate under this Act;

* * * * * * * * *

(xvii) "Notice" includes constructive notice;

(xviii) "Personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person, and as regards any liability for the payment of death duties includes any person who takes possession of or intermeddles with the property of a deceased person without the authority of the personal representatives or the court;

* * * * * * * * *

(xxi) "Purchaser" . . . in Part I. of this Act . . . only means a person who acquires an interest in or charge on property for money or money's worth; and in reference to a legal estate includes a chargee by way of legal mortgage; and where the context so requires "purchaser" includes an intending purchaser; . . .

(xxii) "Registered land" has the same meaning as in the Land Registration Act, 1925, and "Land Registrar" means the Chief Land Registrar under that Act;

* * * * * * * * *

(xxiv) "Sale" includes an extinguishment of manorial incidents, but in other respects means a sale properly so called;

(xxv) "Securities" include stocks, funds and shares;

(xxvi) "Tenant for life," "statutory owner," "settled land," "settlement," "vesting deed," "subsidiary vesting deed," "vesting order," "vesting instrument," "trust instrument," "capital money," and "trustees of the settlement" have the same meanings as in the Settled Land Act, 1925;

* * * * * * * * *

209.—(1) This Act may be cited as the Law of Property Act, 1925.

(2) This Act shall come into operation on the first day of January, nineteen hundred and twenty-six.

(3) This Act extends to England and Wales only.

THE LAND REGISTRATION ACT, 1925.

[15 & 16 GEORGE 5, CHAPTER 21.]

[9th April, 1925.

PART I.

PRELIMINARY.

3. In this Act unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

* * * * * * * *

(iii) "Death duty" means estate duty, succession duty, legacy duty, and every other duty leviable or payable on any death;

* * * * * * * * *

(viii) "Land" includes land of any tenure (including land, subject or not to manorial incidents, enfranchised under Part V. of the Law of Property Act, 1922), and mines and minerals, whether or not held with the surface, buildings or parts of buildings (whether the

division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land; but not an undivided share in land; and "hereditaments" mean real property which on an intestacy might, before the commencement of this Act, have devolved on an heir;

* * * * * * * * *

(xv) "Minor interests" mean the interests not capable of being disposed of or created by registered dispositions and capable of being overridden (whether or not a purchaser has notice thereof) by the proprietors unless protected as provided by this Act, and all rights and interests which are not registered or protected on the register and are not overriding interests, and include—

(*a*) in the case of land held on trust for sale, all interests and powers which are under the Law of Property Act, 1925, capable of being overridden by the trustees for sale, whether or not such interests and powers are so protected; and

(*b*) in the case of settled land, all interests and powers which are under the Settled Land Act, 1925, and the Law of Property Act, 1925, or either of them capable of being overridden by the tenant for life or statutory owner whether or not such interests and powers are so protected as aforesaid;

* * * * * * * * *

(xvii) "Personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person, and as regards any liability for the payment of death duties includes any person who takes possession of or intermeddles with the property of a deceased person without the authority of the personal representatives or the court; and where there are special personal representatives for the purposes of any settled land, it means, in relation to that land, those representatives;

* * * * * * * * *

(xx) "Proprietor" means the registered proprietor for the time being of an estate in land or of a charge;

(xxi) "Purchaser" means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee, or other person who for valuable consideration acquires any interest in land or in any charge on land;

(xxii) "Registered dispositions" mean dispositions which take effect under the powers conferred on the proprietor by way of transfer, charge, lease or otherwise and to which (when required to be registered) special effect or priority is given by this Act on registration;

(xxiii) "Registered estate," in reference to land, means the legal estate, or other registered interest, if any, as respects which a person is for the time being registered as proprietor, but does not include a registered charge and a "registered charge" includes a mortgage or incumbrance registered as a charge under this Act;

(xxiv) "Registered land" means land or any estate or interest in land the title to which is registered under this Act or any enactment replaced by this Act, and includes any easement, right, privilege, or benefit which is appurtenant or appendant thereto, and any mines and minerals within or under the same and held therewith;

* * * * * * * * *

(xxviii) "Trust for sale," in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without a power at discretion to postpone the sale;

* * * * * * * * *

PART VI.

General Provisions as to Registration and the Effect thereof.

73.—(1) A registered disposition in favour of a purchaser shall operate to vest in him the estate or interest transferred or created by the disposition free from all claims of His Majesty for death duties, notwithstanding that notice of a claim for duties may be noted on the register under this section[1].

(2) A disposition to any person, other than a purchaser, shall take effect subject to any charge for payment of death duties and the interest thereon, whether notice of a claim for the duties is entered on the register or not.

(3) A personal representative, in whom the registered estate vests on a death, shall be accountable for all death duties which may become leviable or payable on the death of the deceased in respect of the registered land or any interest therein.

(4) In every other case the proprietor of a registered estate (other than a purchaser who acquires a registered estate free from the charge for duties) shall be accountable for all the death duties which become leviable or payable in respect of that estate or of any minor interest capable of being overridden by a registered disposition made by him.

(5) A personal representative or other proprietor who disposes of any interest in registered land to a purchaser by a disposition which is registered or protected on the register, and the proceeds of sale, funds and other property, if any, derived from the disposition and the income thereof, shall (subject as hereinafter provided) be and remain liable in respect of and stand charged with the payment of the duties the charge for which is overridden by the disposition, together with any interest payable in respect of the same.

(6) Notwithstanding that any duties may be payable by instalments, on a disposition of a registered estate by way of sale, exchange, or charge, all death duties payable in respect of the estate dealt with remaining unpaid, the charge for which is overridden by such disposition, shall immediately become payable and carry interest at the rate of four pounds per centum per annum from the date of the disposition:

Provided that, where by reason of this subsection an amount is paid or becomes payable for duties in excess of the amount which would have been payable if the duties had continued to be paid by instalments, such excess shall be repaid or allowed as a deduction by the Commissioners of Inland Revenue.

(7) Where on the death of a proprietor it appears to the registrar that a charge for death duties has arisen, the registrar shall enter notice of the charge on the register in the prescribed manner.

(8) When any such notice is entered, the registrar shall, before registering or entering notice of any disposition which would operate to override the charge for duties, give notice of the intended registration or entry to the said Commissioners, and cancel the notice of the claim for duties so far as it relates to the land or interest therein comprised in the disposition.

(9) When all claims for duties have been satisfied, or no such claims arise, or the said Commissioners are satisfied that the duties will be paid or commuted, they shall notify the fact to the registrar, who shall thereupon cancel the notice, if any, of the claim.

[1] As to an unregistered disposition, *see* the L. P. A. 1925, s. 17.

(10) For the purpose of raising the duty and the costs of raising the same, the personal representative or other proprietor accountable as aforesaid shall have all the powers which are by any statute conferred on any person for raising the duty.

(11) Notwithstanding that any duties are by this section made payable by the personal representative or proprietor of the land, nothing herein contained shall affect the liability of the persons beneficially interested or of their minor interests in respect of any duty, and such persons shall accordingly account for or repay the same, and any interest and costs attributable thereto, to the said Commissioners or to the personal representative or other proprietor made accountable, and nothing in this section shall affect the remedies of the said Commissioners against any person other than a purchaser.

(12) Capital money liable to be laid out in the purchase of land to be settled in the same manner as the land in respect of which the duty became payable, and personal estate held on the same trusts as the proceeds of sale of land (in respect of which the duty became payable) held on trust for sale, may, by the direction of the person accountable, and although the duty is only payable in respect of a minor interest which is or is capable of being overridden by a disposition to a purchaser, be applied in discharging all or any of the duties and costs aforesaid.

(13) Where the duties would not, except by virtue of the last subsection, be payable out of capital money, the amount so paid shall be repaid by the person liable for the duty to the trustees of the settlement or trustees for sale, by the like instalments and at the like rate of interest by and at which the unpaid duty and the interest thereon might have been paid if the land had not been disposed of, and the minor or other interests of the persons liable and remaining subject to the settlement of the land or of the proceeds of the sale, shall stand charged with the repayment of the instalments and interest aforesaid; and the trustees of the settlement or the trustees for sale shall be entitled to recover and receive any excess of duty which may become repayable by the said Commissioners.

(14) Nothing in this section shall impose on a personal representative, trustee, or other person in a fiduciary position, as such, any liability for payment of duty in excess of the assets (including real estate) vested in him or in the trustees of the settlement which may for the time being be available in his or their hands for the payment of the duty, or which would have been so available but for his or their own neglect or default, or impose on the proprietor of a registered charge any liability to discharge death duties unless the claim was paramount to his charge.

(15) In this section "purchaser" includes only a purchaser for money or money's worth.

(16) This section only applies to death duties which become payable or leviable after the commencement of this Act.

With respect to death duties which become payable or leviable before that date section thirteen of the Land Transfer Act, 1897, and all the other provisions of the Land Transfer Acts, 1875 and 1897, relating to death duties shall, notwithstanding any repeal, continue to apply.

PART VIII.

Application to particular Classes of Land.

87.—(1) On the death of a proprietor, or of the survivor of two or more joint proprietors of settled land (whether the land is settled by his will or by an instrument taking effect on or previously to his death), his personal representative shall hold the settled land subject to payment or to making provision for payment of all death duties and other liabilities affecting the land, and having priority to the settlement, upon trust to transfer the same by an assent in the prescribed manner to the tenant for life or statutory owner, and in the meantime upon trust to give effect to the minor interests under the settlement; but a transfer shall not be made to an infant.

* * * * * * * * *

PART XII.

ADMINISTRATIVE AND JUDICIAL PROVISIONS.

His Majesty's Land Registry.

129. The Commissioners of Inland Revenue and other Government Departments, and local authorities, may furnish to the registrar on his request such particulars and information in regard to land and charges, and the registrar may in like manner furnish to the Commissioners of Inland Revenue, other Government Departments, and local authorities on their request such particulars and information as they are respectively by law entitled to require owners of property to furnish to them direct.

* * * * * * * * *

148.—(1) This Act may be cited as the Land Registration Act, 1925.

(2) This Act shall come into operation on the first day of January nineteen hundred and twenty-six, but shall be deemed to come into operation immediately after the Law of Property Act, 1925, the Settled Land Act, 1925, the Land Charges Act, 1925, the Trustee Act, 1925, and the Administration of Estates Act, 1925, come into operation.

(3) This Act extends to England and Wales only.

* * * * * * * * *

THE LAND CHARGES ACT, 1925.

[15 & 16 GEORGE 5, CHAPTER 22.]

PART V. [9th April, 1925.

Land Charges.

10.—(1) The following classes of charges on, or obligations affecting, land may be registered as land charges in the register of land charges, namely :—

* * * * * * * * *

Class C :—A mortgage charge or obligation affecting land of any of the following kinds, created either before or after the commencement of this Act ; but if created before such commencement only if acquired under a conveyance made after such commencement, namely :—

* * * * * * * * *

(ii) Any equitable charge acquired by a tenant for life or statutory owner under the Finance Act, 1894, or any other statute, by reason of the discharge by him of any death duties or other liabilities, and to which special priority is given by the statute (in this Act called " a limited owner's charge ") ; and

* * * * * * * * *

Class D :—A charge or obligation affecting land of any of the following kinds, namely :—

(i) Any charge acquired by the Commissioners of Inland Revenue under any statute passed or hereafter to be passed for death duties leviable or payable on any death which occurs after the commencement of this Act ; and

* * * * * * * * *

(2) A land charge shall be registered in the name of the estate owner whose estate is intended to be affected except that, in the case of a land charge registered before the commencement of this Act, under any enactment replaced by this Act,

in the name of a person not being the estate owner, it may remain so registered until it is registered in the name of the estate owner in the prescribed manner.

(3) Where a land charge is not created by an instrument, short particulars of the effect of the charge shall be furnished with the application to register the charge.

(4) Nothing in this section shall be deemed to authorise the Commissioners of Inland Revenue to register a land charge in respect of any claim for death duties unless the duty has become a charge on the land, and the application to register any such charge shall state the duties in respect of which the charge is claimed, and, so far as possible, shall define the land affected, and such particulars shall be entered or referred to in the register.

* * * * * * * * *

13.—(2) A land charge of Class B, Class C or Class D, created or arising after the commencement of this Act, shall (except as hereinafter provided) be void as against a purchaser of the land charged therewith, or of any interest in such land, unless the land charge is registered in the appropriate register before the completion of the purchase :

Provided that, as regards a land charge of class D and an estate contract created or entered into after the commencement of this Act, this sub-section only applies in favour of a purchase of a legal estate for money or money's worth.

* * * * * * * * *

PART VIII.

General.

20. In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say :—

* * * * * * * * *

(4) " Estate owner," " legal estate," " equitable interest," " trust for sale," " charge by way of legal mortgage," " will," and " death duty " have the same meanings as in the Law of Property Act, 1925.

* * * * * * * * *

(8) " Purchaser " means any person (including a mortgagee or lessee) who, for valuable consideration, takes any interest in land or in a charge on land ; and " purchase " has a corresponding meaning ;

* * * * * * * * *

23.—(1) As respects pending actions, writs, orders, deeds of arrangement and land charges (not including local land charges) required to be registered or re-registered after the commencement of this Act, this Act shall not apply thereto, if and so far as they affect registered land, and can be protected under the Land Registration Act, 1925, by lodging or registering a creditor's notice, restriction, caution, inhibition or other notice.

(2) Nothing in this Act imposes on the registrar any obligation to ascertain whether or not a pending action, writ, order, deed of arrangement or land charge affects registered land.

26.—(1) This Act may be cited as the Land Charges Act, 1925.

(2) This Act shall come into operation on the first day of January, nineteen hundred and twenty-six.

(3) This Act extends to England and Wales only.

THE FINANCE ACT, 1925.

[15 & 16 GEORGE 5, CHAPTER 36.]

[30th June, 1925.

PART III.

Death Duties.

22.[1] The scale set out in the Fourth Schedule to this Act shall in the case of persons dying after the commencement of this Act be substituted for the scale set out in the Third Schedule to the Finance Act, 1919, as the scale of rates of estate duty :—

Provided that, where an interest in expectancy within the meaning of Part I of the Finance Act, 1894, in any property has, before the twenty-eighth day of April, nineteen hundred and twenty-five, been bona fide sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this Part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

23.—(1) Where an estate in respect of which estate duty is payable on the death of a person dying after the commencement of this Act comprises or consists of agricultural property, the estate duty payable in respect of the agricultural property shall, instead of being charged on the principal value thereof at the appropriate rate payable under this Act, be charged as follows, that is to say, the duty shall be charged on the agricultural value of the property at the appropriate rate payable under the scale of rates set out in the Third Schedule to the Finance Act, 1919, and shall be charged on the amount by which the principal value of the agricultural property exceeds the agricultural value thereof (in this Act referred to as "the excess principal value") at the appropriate rate payable under the scale set out in the Fourth Schedule to this Act.

(2) For the purposes of this section the agricultural value of agricultural property shall be taken to be the value which the property would bear if it were subject to a perpetual covenant prohibiting its use otherwise than as agricultural property, decreased by the value of any timber, trees, wood or underwood growing thereon.

(3) Where any agricultural property is subject to a mortgage, debt or incumbrance in respect of which an allowance is by law to be made for the purposes of estate duty, the mortgage, debt or incumbrance shall, for the purposes of this section, be apportioned between the agricultural value of the property and the excess principal value of the property in proportion to the amounts of those two values respectively.

(4) In this section the expression "agricultural property" means agricultural property within the meaning of paragraph (*g*) of subsection (1) of section twenty-two of the Finance Act, 1894, and the expression "appropriate rate" means the rate of estate duty appropriate to the principal value of the estate passing on the death of the deceased.

24. For the purposes of section eighteen of the Finance Act, 1894, and of section fifty-eight of the Finance (1909-10) Act, 1910, a succession shall be deemed to arise on the happening of the death by reason of which the successor, or any person in his right or on his behalf, becomes entitled in possession to the succession or to the receipt of the income or profits thereof.

---

[1] New scale substituted as to persons dying on or after 1st August, 1930, by F. A. 1930, s. 33.

PART IV.

General.

* * * * * * * * *

28.—(3) Part III of this Act shall be construed together with the Finance Act, 1894.

(4) This Act may be cited as the Finance Act, 1925.

(5) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * * * * * *

FOURTH SCHEDULE.[1]

SCALE OF RATES OF ESTATE DUTY.

Principal Value of the Estate.					Rate per cent of Duty
	£			£	
Exceeding	100	and not exceeding		500	1
„	500	„	„	1,000	2
„	1,000	„	„	5,000	3
„	5,000	„	„	10,000	4
„	10,000	„	„	12,500	5
„	12,500	„	„	15,000	6
„	15,000	„	„	18,000	7
„	18,000	„	„	21,000	8
„	21,000	„	„	25,000	9
„	25,000	„	„	30,000	10
„	30,000	„	„	35,000	11
„	35,000	„	„	40,000	12
„	40,000	„	„	45,000	13
„	45,000	„	„	50,000	14
„	50,000	„	„	55,000	15
„	55,000	„	„	65,000	16
„	65,000	„	„	75,000	17
„	75,000	„	„	85,000	18
„	85,000	„	„	100,000	19
„	100,000	„	„	120,000	20
„	120,000	„	„	140,000	21
„	140,000	„	„	170,000	22
„	170,000	„	„	200,000	23
„	200,000	„	„	250,000	24
„	250,000	„	„	325,000	25
„	325,000	„	„	400,000	26
„	400,000	„	„	500,000	27
„	500,000	„	„	750,000	28
„	750,000	„	„	1,000,000	29
„	1,000,000	„	„	1,250,000	30
„	1,250,000	„	„	1,500,000	32
„	1,500,000	„	„	2,000,000	35
„	2,000,000	..	.. ..	.. .. ..	40

[1] New scale substituted as to persons dying on or after 1st August, 1930, by F. A. 1930, s. 33.

THE ADOPTION OF CHILDREN ACT, 1926.

[16 & 17 GEORGE 5, CHAPTER 29.]

[4th August, 1926.

5.—(3) Where an adopted child or the spouse or issue of an adopted child takes any interest in real or personal property under a disposition by the adopter, or where an adopter takes any interest in real or personal property under a disposition by an adopted child or the spouse or issue of an adopted child, any succession, legacy or other duty which becomes leviable in respect thereof shall be payable at the same rate as if the adopted child had been a child born to the adopter in lawful wedlock.

(4) For the purposes of this section "disposition" means an assurance of any interest in property by any instrument whether *inter vivos* or by will including codicil.

* * * * * * * * *

12.—(1) This Act may be cited as the Adoption of Children Act, 1926.

(2) This Act shall come into operation on the first day of January Nineteen hundred and twenty-seven.

(3) This Act shall not apply to Scotland or Northern Ireland.

THE LEGITIMACY ACT, 1926.

[16 & 17 GEORGE 5, CHAPTER 60.]

[15th December, 1926.

7. Where a legitimated person or any relative of a legitimated person takes any interest in real or personal property, any succession, legacy or other duty which becomes leviable after the date of legitimation shall be payable at the same rate as if the legitimated person had been born legitimate.

* * * * * * * * *

12.—(1) This Act may be cited as the Legitimacy Act, 1926.

(2) This Act shall come into operation on the first day of January Nineteen hundred and twenty-seven.

(3) The provisions of this Act shall, save as therein otherwise expressly provided, extend only to England and Wales.

FINANCE ACT, 1927.

[17 & 18 GEORGE 5, CHAPTER 10.]

PART IV. [29th July, 1927.

51. Section 16 of the Finance Act, 1907 (which provides that settled property to which sub-section (2) of section twelve of the Finance Act, 1900, applies, instead of being aggregated with other property to a limited extent only under the said section twelve, shall, in the case of persons dying on or after the 19th day of April, 1907, be treated as an estate by itself), shall be repealed so far as relates to persons dying after the commencement of this Act:

Provided that, where an interest in expectancy within the meaning of Part I of the Finance Act, 1894, in any property has before the 11th day of April, 1927, been *bonâ fide* sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this section had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

52. Where the Commissioners of Inland Revenue are satisfied that, under a settlement of which the forum of administration is in Northern Ireland, succession duty has been paid, or is payable, in Northern Ireland in respect of any settled personal or moveable property by reason of the death of a person dying on or after the 22nd day of November, 1921, a sum equal to the amount of that duty shall be allowed from the legacy duty or succession duty payable in Great Britain in respect of that property on the same death.[1]

53. *Authorisation of disclosure of tax information to Northern Ireland Government.*

57. * * * * * * * * * *

(3) Any reference in this Act to any enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

(4) This Act may be cited as the Finance Act, 1927.

(5) Such of the provisions as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

(6) The enactments set out in Part II of the Sixth Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

SIXTH SCHEDULE.

ENACTMENTS REPEALED.

PART II.

Session and Chapter.	Short Title.	Extent of Repeal.
63 & 64 Vict., c. 7 –	The Finance Act, 1900	Sub-section (2) of Section twelve, except so far as relates to persons dying before the nineteenth day of April nineteen hundred and seven.

THE FINANCE ACT, 1928.

[18 & 19 GEORGE 5, CHAPTER 17.]

[3rd August, 1928.

30. * * * * * * * * * *

(2) Where any person gives such directions as are mentioned in the said section nine[2] by any instrument, and the directions take effect during his life and immediately after the making of the instrument, the property directed to be held in accordance with those directions shall be exempt from estate duty, unless the Treasury, within three months after they receive notice of the taking effect of the instrument, disclaim the interest of the National Debt Commissioners under the said directions.

(3) Where an absolute gift of any property is made during the lifetime of the donor to the National Debt Commissioners to be applied by them in reduction of the National Debt, the property shall be exempt from estate duty as from the date when it is transferred to the Commissioners.

[1] Reciprocal provisions by Northern Ireland contained in Finance Act (Northern Ireland) 1927.
[2] Section 9 of the Superannuation and other Trust Funds (Validation) Act, 1927 (which provides for the validation of trust funds for the reduction of the National Debt).

35. * * * * * * * * * *

(3) Any reference in this Act to any enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

(4) This Act may be cited as the Finance Act, 1928.

(5) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

THE FINANCE ACT, 1930.

[20 & 21 GEORGE V, CHAPTER 28.]

[1st August, 1930.

PART III.

ESTATE DUTY.

Rates of Estate Duty.

33. The scale set out in the Second Schedule to this Act shall in the case of persons dying after the commencement of this Act be substituted for the scale set out in the Fourth Schedule to the Finance Act, 1925, as the scale of rates of estate duty:

Provided that, where an interest in expectancy within the meaning of Part I of the Finance Act, 1894 (in this Part of this Act referred to as "the principal Act"), in any property (other than property deemed to pass on a death by virtue of the provisions of the next succeeding section but one of this Act) has, before the fourteenth day of April, nineteen hundred and thirty, been *bonâ fide* sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this Part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

Companies.

34.—(1) On the death after the commencement of this Act of any person who has, at any time after the thirty-first day of July, nineteen hundred and eighteen—

(i) made to a company to which this Part of this Act applies, whether directly or indirectly, any such transfer as is specified in subsection (2) of this section; and

(ii) received within the prescribed period out of the resources or at the expense of the company, whether directly or indirectly, any such benefit as is so specified,

there shall be computed for each accounting year falling wholly or partly within the prescribed period the proportion which the total value of the benefits so received in the accounting year bears to the total income of the company in the accounting year, and, if the average of the proportions so computed exceeds fifty per cent., there shall for the purposes of estate duty be deemed to pass on the death (over and above any other property which passes or is deemed to pass thereon), such

sum of money not exceeding the value of the total assets of the company as bears to the said value the same proportion as the said average proportion:

Provided that—

(*a*) the sum computed as aforesaid shall be reduced by the amount, if any, by which the principal value at the date of death—

(1) of the subject of the transfer; or

(2) if the subject of the transfer has been sold or exchanged by the company, either of the subject of the transfer or of the property in the hands of the company which is or represents the proceeds of the sale or exchange

is shown to the satisfaction of the Commissioners of Inland Revenue to fall short of the said sum; and

(*b*) notwithstanding anything in this section, the value of any property or any interest in property shall not be taken into account, directly or indirectly, for the purpose of assessment of estate duty more than once on the same death; and

(*c*) if the total assets of the company comprise any property which is by virtue of the next succeeding section deemed to pass on the death, there shall in computing the said proportions and ascertaining the sum of money, if any, which is deemed to pass by virtue of this section, be subtracted—

(1) from the value of the total assets of the company, the value of the said property as ascertained for the purposes of the next succeeding section;

(2) from the total income of the company in every accounting year and also from the total value of the benefits received by the deceased therein, a sum equal to so much of that total income as is ascribable to—

(i) that property; or

(ii) in a case where that property is deemed to pass as being or representing the proceeds of any other property, that other property or the proceeds thereof or any property representing those proceeds.

(2) The transfers referred to in the preceding subsection are transfers, whether made for consideration or not, of property (being property which, if it had been in the disposition of the deceased at his death, would have been property in respect of which estate duty would have been payable on the death) or any interest in any such property other than—

(*a*) *bonâ fide* sales where the consideration for the sale was received or receivable wholly by the deceased for his own use or benefit and was satisfied or to be satisfied in one or more of the following manners, that is to say, by a capital sum of a fixed amount or by shares in or debentures of the company;

(*b*) transfers of or incidental to the transfer of a business, not being a business which substantially consists in holding, managing, developing or dealing in land situate in Great Britain;

(*c*) transfers of, or of any interest in, property which by virtue of the next succeeding section is deemed to pass on the death;

(*d*) transfers of patents or copyrights, or of any moveable tangible property except money and securities;

(*e*) transfers where either the deceased or the company is acting in the capacity of trustee, factor, agent, receiver, or manager;

and the benefits so referred to are—

(i) any payments made, whether for consideration or not, to or for the benefit of the deceased, other than the following payments, that is to say:—

(1) dividends in respect of shares in the company;

(2) interest on, and repayments in respect of, money lent to the company;

(3) payments of or on account of purchase money under a *bonâ fide* sale, where that purchase money is a capital sum of a fixed amount;

(4) payments of or on account of royalties, not being royalties limited to cease at the death of the deceased:

(ii) any right in or enjoyment of any land.

(3) In ascertaining for the purposes of this section the value of a benefit—

(*a*) in the case of a benefit consisting of a payment, a deduction shall be made in respect of any income tax (other than sur-tax) paid or borne by the deceased in respect of that payment; and

(*b*) the value of a benefit consisting of any right in or enjoyment of land shall be computed by reference to the annual value of that land as ascertained for purposes of income tax, due allowance being made in respect of any rent paid by the deceased.

(4) In ascertaining for the purposes of this section the total income for any accounting year of a company, the income of the company from any source shall be computed in accordance with the provisions of the Income Tax Acts relating to the computation of income from such a source, subject to the modification that the computation shall be made by reference to the actual income for the accounting year and not by reference to the income for any other period:

Provided that—

(*a*) no deduction shall be made in respect of any payment made to or for the benefit of, or any other benefit accorded to, the deceased, except dividends on preference shares in, and interest on money lent to, the company; and

(*b*) subject to the provisions of the last preceding paragraph, deductions shall be made for—

(i) income tax paid or borne by the company; and

(ii) interest on money lent to the company; and

(iii) dividends on preference shares; and

(iv) rents, royalties and other payments by the company on which income tax is deducted at source.

(5) Where the accounting years falling wholly or partly within the prescribed period do not coincide with the periods for which the accounts of the company are made up, the Commissioners of Inland Revenue may for the purpose of ascertaining the total income of the company for an accounting year divide any of the said periods and make such apportionments and aggregations of the income of the company as may be necessary, so, however, that any apportionments so made shall be made in proportion to the number of months or fractions of months in the respective periods for which the apportionment is made.

(6) In this section—

The expression " accounting year,"—

(*a*) in relation to a company which at the time of the death of the deceased person has made up accounts for a period of twelve months ending on a date within the twelve months next preceding the death, means a period of twelve months ending either on that date, or on the same day of the year in any previous year; and

(*b*) in relation to any other company, means a period of twelve months ending on such date within the twelve months next preceding the death as may be determined by the Commissioners of Inland Revenue or on the same day of the year in any previous year; and

The expression " the prescribed period " means the period which—

(i) ends on the date on which the last accounting year ends; and

(ii) begins three years before that date, or, if the company in question was not then in existence, on the day on which the company came into existence.

(7) Property which is deemed to pass on a death by virtue of the provisions of this section shall, notwithstanding anything in any Act, be an estate by itself, and shall not be aggregated with any other property.

35.—(1) Where at any time before the death of a person dying after the commencement of this Act any property in which the deceased had an estate or interest limited to cease at his death, was transferred by the deceased and the person interested in the remainder or reversion, whether directly or indirectly, and whether by one or more transactions, to or for the benefit of a company to which this Part of this Act applies, then unless—

(*a*) the transfer was made before the first day of August, nineteen hundred and eighteen; or

(*b*) the property was settled property and the interest of the deceased would in any case have failed by reason of his death before it would have become an interest in possession; or

(*c*) the share of the consideration payable to the deceased in respect of the transfer was satisfied otherwise than by an allotment of shares in the company or the grant to him by the company of an annuity or other right to receive periodical payments, not being payments on account of purchase money being a capital sum of fixed amount; or

(*d*) the deceased had at least three years before his death relinquished all interest in the property and had not at any time within those three years the possession or enjoyment (otherwise than under a lease or agreement for a lease at a rack rent) of any part thereof or of any benefit secured to him, whether by contract or otherwise, in relation to the relinquishment of his interest therein, and was not at any time within the said period in receipt of or entitled to any payment from the company, otherwise than in respect or on account of debentures or loans or purchase money being a capital sum of a fixed amount,

the property shall be deemed for the purposes of estate duty to pass on the death in like manner as if the estate or interest of the deceased therein had continued until the death:

Provided that where the property or any part thereof has been *bonâ fide* sold or exchanged by the company during the deceased's life time for full consideration in money or money's worth, the property or so much thereof as has been so sold or exchanged shall not be deemed to pass on the death, but in lieu thereof the proceeds of the sale or exchange or, as the case may be, the property which, at the time of death, represents those proceeds shall be deemed so to pass.

(2) In determining the value of any property deemed to pass under this section, there shall be deducted from the principal value thereof—

(*a*) so much of any sum borrowed by the company as has been applied by the company in the improvement of the property, and has not at the death been repaid by the company ;

(*b*) a sum equal to the capital sum of money paid to the deceased as part of the consideration for the transfer ; and where estate duty is payable in connection with the death on any shares of or debentures in the company, a sum equal to the principal value of such of those shares or debentures as were transferred or allotted to the deceased in consideration of the transfer of the property.

(3) Property which is deemed to pass on a death by virtue of the provisions of this section shall, notwithstanding anything in any Act, be an estate by itself, and shall not be aggregated with any other property.

36.—(1) The estate duty payable in respect of any property which is by virtue of the provisions of the two last preceding sections deemed to pass on the death of any person shall be a debt due from the company concerned to His Majesty.

(2) The company concerned shall be accountable for any such duty and shall, for the purpose of raising and paying that duty, have all the powers conferred on accountable persons by the principal Act, and if the duty or any part thereof is paid by the executor of the deceased it shall be repaid to him by the company.

(3) Where on the death of any person a claim for duty arises by virtue of any of the provisions of the two last preceding sections, the company concerned shall notify the Commissioners of Inland Revenue of the death of the said person, and any company wilfully failing to give such a notification shall be liable to a penalty not exceeding five hundred pounds.

(4) The Commissioners of Inland Revenue may, for the purposes of carrying the two last preceding sections and the next following section of this Act into effect, require any company to which this Part of this Act applies to furnish to them within two months copies of such of the balance sheets and profit and loss or income and expenditure accounts, and such other particulars, as the Commissioners may reasonably require, and if any company fails to comply with the provisions of this subsection—

(i) the company shall be liable to a penalty not exceeding five hundred pounds, and every director, manager, secretary or other officer of the company who knowingly and wilfully authorises or permits the failure shall be liable to the like penalty ; and

(ii) an order may be made against all or any of the directors of the company requiring them to comply with the requirements of the Commissioners in like manner as an order may be made against any person who is accountable for succession duty or legacy duty to deliver an account and the provisions of section fifty-five of the Crown Suits, &c. Act, 1865, and in Scotland the provisions of section forty-seven of the Succession Duty Act, 1853, shall apply accordingly, subject to the necessary modifications.

37.—(1) Where there pass on the death of any person dying after the commencement of this Act, any shares (not being preference shares) in any company to which this Part of this Act applies, then if either—

(*a*) there is deemed by virtue of the provisions of this Part of this Act to pass on the death a sum of money computed by reference to the value of the total assets of the company; or

(*b*) the control of the company was immediately before the death in the hands of the deceased;

the principal value of those shares for the purposes of estate duty shall not be ascertained in the manner provided by subsection (5) of section seven of the principal Act, but shall be ascertained by reference to the value of the total assets of the company:

Provided that in cases falling within paragraph (*a*) of this subsection, the value of the total assets of the company shall, for the purposes of this section, be deemed to be reduced by the sum of money therein referred to.

(2) For the purposes of this section the control of a company shall be deemed to be in the hands of a person if—

(*a*) by virtue of the shares which he controls he has control of more than half the voting power of the company; or

(*b*) he has by virtue of the provisions in the memorandum of association or articles of the company, or other instrument whatsoever constituting or defining the constitution of the company, the powers of a board of directors or of a governing director or the right to nominate a majority of the directors or the power to veto the appointment of a director, or powers of the like nature; or

(*c*) he has otherwise the right to receive, or the power to dispose of, more than half of the income of the company.

(3) This section shall not apply to shares which have, within the period of twelve months immediately preceding the death of the deceased, been the subject of dealings on a recognised stock exchange in the United Kingdom or been quoted in the official list of such a stock exchange.

38. In this Part of this Act the following expressions have the meanings hereby respectively assigned to them, that is to say—

"Company to which this Part of this Act applies" means any body corporate wheresoever incorporated, which either—

(i) is so constituted as not to be controlled by its shareholders or by any class thereof; or

(ii) has not issued to the public, or, in the case of a company which is about to make an issue of shares to the public, will not, when it has made that issue, have issued to the public, more than half of the shares by the holders whereof it is controlled:

"Share" includes any interest whatsoever in a company, by whatsoever name it is called, analogous to a share, and the expression "shareholder" shall be construed accordingly:

"Preference share" means a share the holder whereof is entitled to a dividend at a fixed rate only:

"Value of the total assets of the company" means the principal value, ascertained in accordance with the provisions of subsection (5) of section seven of the principal Act, of all the assets of the company as a going concern, including goodwill, after deducting therefrom—

(i) the par or redemption value, whichever is the greater, of any debentures, debenture stock and preference shares of the company;

(ii) all debts of the company incurred or created *bonâ fide* for consideration in money or money's worth;

(iii) such sum as on a just and fair computation represents any future or contingent liabilities of the company or any liabilities thereof which are uncertain in amount;

(iv) the amount of any reserve fund separately invested which is *bonâ fide* intended to be applied in payment of pensions to employees or otherwise for the benefit of them or their dependents or relatives, and in no other manner.

Miscellaneous.

39. In the case of a person dying after the commencement of this Act, property which was subject to an annuity or other periodical payment limited to cease on the death of the deceased shall, for the purposes of the principal Act be deemed to pass on the death of the deceased to the extent of the benefit which would accrue from the cesser of that annuity or other payment notwithstanding that the annuity or other payment has been surrendered, assured, divested or otherwise disposed of during the lifetime of the deceased, whether for value or not, to or for the benefit of the person entitled to the property, unless the surrender, assurance, divesting or disposition was *bonâ fide* made or effected three years before the death of the deceased and the person entitled to the annuity or other payment was not at any time within that period in receipt of any substituted annuity or other periodical payment limited to cease on his death, being an annuity or payment which was secured, whether by contract or otherwise, to him in return for the surrender, assurance, divesting or disposition.

40.—(1) Where there pass on the death of a person dying after the commencement of this Act any objects to which this section applies, the value of those objects shall not be taken into account for the purpose of estimating the principal value of the estate passing on the death or the rate at which estate duty is chargeable thereon, and those objects shall, while enjoyed in kind, be exempt from death duties.

(2) In the event of the sale of any objects to which this section applies, death duties shall, subject as hereinafter provided, become chargeable on the proceeds of sale in respect of the last death on which the objects passed and, as respects estate duty, at the rate appropriate to the principal value of the estate passing on that death upon which estate duty is leviable, and with which the objects would have been aggregated if they had not been objects to which this section applies, and the person by whom or for whose benefit the objects were sold shall be accountable for the duties and shall deliver an account for the purposes thereof within one month after the sale:

Provided that death duties shall not become chargeable as aforesaid if the sale is to the National Gallery, British Museum, or any other similar national institution, any university, county council or municipal corporation in Great Britain, or the National Art Collections Fund.

(3) The objects to which this section applies are such pictures, prints, books, manuscripts, works of art, scientific collections or other things not yielding income as on a claim being made to the Treasury under this section appear to them to be of national, scientific, historic or artistic interest.

(4) Nothing in this section shall affect the power of the Treasury under subsection (2) of section fifteen of the principal Act to remit death duties chargeable in respect of any objects to which that section applies.

53.—(3) Part III of this Act shall be construed as one with the Finance Act, 1894.

* * * * * * * * *

(5) Any reference in this Act to any enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

(6) This Act may be cited as the Finance Act, 1930.

(7) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

(8) The enactments set out in the Third Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule, as from the dates specified therein.

SECOND SCHEDULE.

Scale of Rates of Estate Duty. Principal Value of Estate.					Rate per cent. of Duty.
	£		£		
Exceeding	100	and not exceeding	500		1
,,	500	,, ,,	1,000		2
,,	1,000	,, ,,	5,000		3
,,	5,000	,, ,,	10,000		4
,,	10,000	,, ,,	12,500		5
,,	12,500	,, ,,	15,000		6
,,	15,000	,, ,,	18,000		7
,,	18,000	,, ,,	21,000		8
,,	21,000	,, ,,	25,000		9
,,	25,000	,, ,,	30,000		10
,,	30,000	,, ,,	35,000		11
,,	35,000	,, ,,	40,000		12
,,	40,000	,, ,,	45,000		13
,,	45,000	,, ,,	50,000		14
,,	50,000	,, ,,	55,000		15
,,	55,000	,, ,,	65,000		16
,,	65,000	,, ,,	75,000		17
,,	75,000	,, ,,	85,000		18
,,	85,000	,, ,,	100,000		19
,,	100,000	,, ,,	120,000		20
,,	120,000	,, ,,	150,000		22
,,	150,000	,, ,,	200,000		24
,,	200,000	,, ,,	250,000		26
,,	250,000	,, ,,	300,000		28
,,	300,000	,, ,,	400,000		30
,,	400,000	,, ,,	500,000		32
,,	500,000	,, ,,	600,000		34
,,	600,000	,, ,,	800,000		36
,,	800,000	,, ,,	1,000,000		38
,,	1,000,000	,, ,,	1,250,000		40
,,	1,250,000	,, ,,	1,500,000		42
,,	1,500,000	,, ,,	2,000,000		45
,,	2,000,000		—		50

THIRD SCHEDULE.

PART IV.

ENACTMENTS REPEALED AS FROM THE COMMENCEMENT OF THIS ACT.

Session and Chapter.	Short Title.	Extent of Repeal.
59 & 60 Vict. c. 28.	The Finance Act, 1896.	Section twenty (except as regards persons dying before the commencement of this Act).
10 Edw. 7 & 1 Geo. 5. c. 8.	The Finance (1909-10) Act, 1910.	Section sixty-three (except as regards persons dying before the commencement of this Act).
11 & 12 Geo. 5. c. 32.	The Finance Act, 1921.	Section forty-four (except as regards persons dying before the commencement of this Act).

* * * * * * * * *

THE ADOPTION OF CHILDREN (SCOTLAND) ACT, 1930.

[20 & 21 GEORGE 5, CHAPTER 37.]

[1st August, 1930.

5.—(4) Where an adopted child or the spouse or issue of an adopted child takes any interest in heritable or moveable property under a disposition by the adopter, or where an adopter takes any interest in heritable or moveable property under a disposition by an adopted child or the spouse or issue of an adopted child, any succession, legacy or other duty which becomes leviable in respect thereof shall be payable at the same rate as if the adopted child had been a child born to the adopter in lawful wedlock.

(5) For the purpose of this section "disposition" means a deed, instrument or writing whether *inter vivos* or *mortis causa* whereby property is conveyed or under which a succession arises.

* * * * * * * * *

12.—(1) This Act may be cited as the Adoption of Children (Scotland) Act, 1930.

(2) This Act shall come into operation on the first day of October nineteen hundred and thirty.

(3) This Act shall apply only to Scotland.

INDEX.

ABBREVIATIONS USED.

E.D.=Estate Duty.
F.A.=Finance Act.
G.B.=Great Britain.
L.D.=Legacy Duty.
S.D.=Succession Duty.
S.E.D.=Settlement Estate Duty.

ABATEMENT:
E.D. Where margin small, 117-119.
L.D. and S.D. Estates exceeding £1,000, 382, 404, 513-514.
Killed in war cases, 256-260, 386-387, 517.
Legacies, 337, 385-386.

ABROAD (*see* DOMICILE *and* PROPERTY OUT OF G.B.).

ACCELERATION:
Of Succession, 483-485.

ACCEPTANCE:
Of Government stocks in payment of duties, 318-321, 347, 405, 539.
Of real estate and leaseholds in payment of E.D. or S.D., 160, 486.

ACCIDENT:
Compensation for death by, not liable to E.D., 94.
Newspaper insurance schemes, 8.

ACCOUNT (*see also* ACCOUNTABLE PERSONS):
E.D. Commissioners' requirements, 181-183.
Corrections, 160-161, 305-307.
Forms, 282-285, 305-309, 322.
Limitation of liability on settlement of, 184-185.
Time for rendering, 157-159, 167.
Verification, 181-183.
When payable on an, 306.
S.E.D. Forms, 308.
L.D. Corrections, 365-366, 404-405.
Forms, 394-397, 401-402, 404, 406.
Limitation of liability on settlement of, 378.
On death of life tenant, 402.
Time for rendering, 343-346.
S.D. Corrections, 465-467, 468, 538-539.
Forms of, 530-539.
Limitation of liability on settlement of, 496-497.
Time for rendering, 451-452.
Verification, 494-495.

ACCOUNT DUTY (*see also* PROBATE DUTY):
Explanation, 248, 449.
Involving exemption from—
E.D., 247-249.
L.D. at 1 per cent., 391.
S.D. at 1 per cent., 518.
S.D. at higher rates, 449.

ACCOUNTABLE PERSONS:
E.D. Chapter III., 164-203.
Agents, 176-177.
Beneficiaries, 173-175, 179.
Certificate of discharge, 191-196, 310-314.
Companies, 76.
Enforcement of liability, 180-184.
Estate owner, 178-180.
Executor, 164-173.
Executor *de son tort*, 165, 170.
Limitation of liability, 184-186.
Persons, other than executors, 173-180.
Powers of, 200-203, 227-232.
Property out of G.B., 166.
Purchasers, 175, 196-200.
Solicitors and agents, 176-177.
Timber, 145, 147, 177.
Trustees, 173, 175-176.
Under Property Acts of 1925, 169-173, 178-180.
Undivided shares, 167, 170.
Works of art, etc., 177.

L.D. Chapter VIII., 367-378.
Administration action, 375-378.
Agents, 372.
Annuity charged on legacy, 369-370.
Certificate of discharge, 378, 405.
Contingent legacy, 371.
Executors, 338, 367-369.
Furniture, etc., settled, 370-371.
Legatee, 369.
Limitation of liability, 378.
Purchasers, 372-373.
Settled legacies, 371.
Trustees, 371.
Under general power of appointment, 367.
Works of art, etc., 370-371.

S.D. Chapter XIII., 487-507.
Advances, 489.
Agents, 488, 490.
Certificate of discharge, 500-501.
Enforcement of liability, 494-496.
Estate owner, 490-491.
Executor, 488, 490-491.
Limitation of liability, 496-497.
Mortgagee foreclosing, 502.
Powers of, 491-494.
Purchasers, 501-507.

ACCOUNTABLE PERSONS—*continued.*
S.D.—*continued.*
Successor, 487-488.
Timber, 489-490.
Trustees, 487-491.
Under Property Acts of 1925, 490-491.
Works of art, etc., 515.

ACCRETIONS:
E.D. Under Wills Act, 1837, s. 33, 12-13.
L.D. To specific legacies, 344-345, 395.
Residue, 343-349, 400.
Under Wills Act, 1837, s. 33, 329, 522.
S.D. Under Wills Act, 1837, s. 33, 475, 522.

ACCUMULATIONS:
E.D. 17, 244.
L.D. 345.

ACTIVE SERVICE (EXEMPTIONS):
E.D. 256-262.
L.D. 386-387, 391.
S.D. 517, 519.

ACT OF PARLIAMENT (PROPERTY SETTLED BY) (*see* CROWN ENTAILS).

ADJUSTMENT OF DUTY:
Between beneficiaries:
E.D. 227-232.
L.D. 372-375.
S.D. 492-493, 507-508.
Between Revenue and taxpayer (*see* CORRECTIONS).

ADMINISTRATION (*see also* REPRESENTATION):
Action, payment of duties in, 375-378, 489.
Correction of L.D. before conclusion of, 348.
De bonis non, 316.
Expenses of, not deductible against E.D. value, 290.
Extra expenses of, when deductible, 156.
Forum of, 110-115, 433-441.
Limited grant, 165-166, 187.
No next of kin, 8.
Order of, 203-204, 212-213.
Period for, 344.
Settled Land grant, 170-172.
Stamp Duty (*see* PROBATE DUTY).

ADMINISTRATOR (*see* EXECUTOR).

ADOPTION:
Effect on rates of L.D. and S.D., 342-343, 443.

AD VALOREM DUTY:
Rates of E.D., 116-117,122-133.

ADVANCES:
L.D. 346.
S.D. 483-484, 489.

ADVOWSON :
Bequest of next presentation, 330.
Liability to S.D., 516.
Not liable to E.D., 266.

AFFIDAVIT (*see* INLAND REVENUE AFFIDAVIT *and* CORRECTIONS).

AGENT :
Misappropriation of duty by, 177, 372, 375, 490.
Not otherwise accountable for E.D. or S.D., 176-177, 488.

AGGREGATION :
Annuities arising, 93-94.
Commutation cases, in, 130.
Definition, 122.
Examples, 122, 126, 131-133.
EXEMPTIONS :
Free estate not exceeding £1,000, 121, 125-128.
Property in which deceased never had an interest, 83, 123-125.
Property not liable to E.D., 122-123.
Property passing on death in Great War, 129-130, 260.
Property settled before F.A., 1894, 130-131.
State Entails, 124.
Transfers to companies, 67, 75, 130.
Timber, 129, 145-146.
Works of art, etc., 128-129, 264-266.
Interests in expectancy, 121, 127, 140.
Joint property, 121, 127.
Not affected by allowance against duty, 123.
Policies, 83.

AGRICULTURAL PROPERTY :
E.D. 143-145, 293-294, 299-300.
S.D. 455-456.
Timber, 145-148, 301, 456-457, 537-538.

AGRICULTURAL VALUE :
Exemption from increased rates of E.D., 144-145.

AIRMAN :
Exemptions and remissions, 256-262, 386-387, 517.
Payments without grant of representation, 286.

ALIENATION (*see also* PURCHASERS) :
S.D. on alienated succession, 472-473.
Distinction from new succession, 476-483.

ALLOWANCES :
E.D. Annuity, 153-155.
Assets of company, from, 63-65.
Colonial duty, 273-275, 298.
Commutation on interests in expectancy, 309-310.
Commuted S. D. against E.D., 163, 471.
Compensation on enfranchisement, 304.
Consular Court fees, 274, 299.
Cost of acquiring reversion by life tenant, 96, 150.
Costs of sale (none), 133, 290.
Deductions generally, 148-157.
Depreciation in the case of large holdings, 134.
Dilapidations, 303-304.

ALLOWANCES—*continued.*
E.D.—*continued.*
Extra expenses of administration of property out of G.B., 156.
Fixed duty against *ad valorem* duty, 120.
Fixed duty cases, 120.
Foreign debts, 155-156.
Foreign duty, 157.
Funeral expenses, 148, 151, 305.
Guarantee debts, 148, 150-151.
Improvements by donee, 35.
Improvements prior to sale, 290.
Income Tax and Sur Tax, 151, 299-300.
Income Tax on benefits from companies, 59-60.
Irish Free State duty, 275.
L.D., S.D., Temporary Estate Duty, at 1 or 1½ per cent. against E.D., 267-268.
Mortgages, 148-153.
Mourning, 305
Northern Irish duty, 276.
Partial consideration, 240.
Quick succession, 276-280.
Rent paid to a company, 60.
Rent where deceased was a tenant, 304.
Settled property transferred to company, from, 74-75.
Timber, 147.
Voluntary debts (none), 148-149.
S.E.D. Against E.D., 268-272, 308.
In Scotland, 95-96, 308.
Interest on, from 15th August, 1914, 269-273, 308.
L.D. Against interests in expectancy, 355-356, 402-403.
Commutation, 356, 403.
Contingencies, 363-364.
E.D., 348, 351, 362, 398, 401, 402.
In residuary account, 348-349, 398-401.
Irish Free State duty, 441.
Life interest against advances, 346.
Life interest against interest in expectancy, 355-356, 402-403.
Northern Irish duty, 441.
On death of life tenant, 402.
Where general power of appointment exercised, 334.
S.D. Annuity, 428-429, 532, 534.
Contingencies, 465-467.
Copyholds, 460-461, 532-533.
E.D., 453, 456, 457-458, 460, 464.
Enlargement of interest, 485-486.
Improvements by successor, 468, 532.
Incumbrances, 467-468, 532, 534.
Irish Free State duty, 441.
Management expenses, not allowed, 460.
Northern Irish duty, 441.
Outgoings and repairs, 459-460, 531-533.
Property given up by successor, 468.
Timber, 147, 456.
Where general power of appointment exercised, 422.
AMBASSADOR:
Foreign, locality of property of, 106.

AMERICA, UNITED STATES OF :
Certificate of payment of E.D., for use in, 314.
Securities issued in, free of taxation, 237.
ANIMALS :
Maintenance of, when liable to L.D., 331.
ANNUITY :
E.D. Ceasing, 23-32.
Deduction against value for E.D., 153-155.
EXEMPTIONS :
Charitable, 238.
Full consideration in money, 238-239.
Trustees, 238.
Secured by bond, 29.
Value, 24-25.
Value when payable out of mixed fund, 249.
Charged on property, owner accountable, 177-178.
Continuing :
Provided by deceased, 89.
Value, 28, 307.
Deduction, 153-155.
Incidence of duty, 211, 214, 216-217, 223, 224, 229.
Joint or survivorship, exemption, 263.
Purchased or provided by deceased, 82-94.
EXEMPTIONS :
Full consideration in money, 90-92.
Not exceeding £25, 263.
Pensions from Government of India, 261.
Payment by instalments, 159.
Value, 89.
When an estate by itself, 83, 124.
Release within three years, 48-52.
Reservation in gifts *inter vivos*, 42-47.
State, 23, 124.
L.D. 357-359.
Charged on legacy, 358-360, 369-370.
Conditional, 331.
Contingency, 362.
Death before all instalments paid, 358, 361, 404-405.
Deduction against residue, 400-401.
Directed to be purchased, 358.
Discount, 358, 361, 395-396.
Duty payable by way of, 361-363.
Free of Income Tax, 329, 365.
Given to trustees for acting, 333.
Payment by instalments, 357-358, 361, 395-396.
Sum to purchase, 357-358.
Value, 357-359, 361-363, 395-396, 400-401.
S.D. Capital money used to pay duty, 492-493.
Cesser of, 428-430, 532-533.
Cesser of, on gifts with reservation, 431-433, 535-537.
Created by successor, 471-472.
Deduction of E.D., 530.
To trustee for acting, 415.
Value, 530.
Value of property subject to, 428-429, 532, 534.

APPEAL :
From Commissioners, 183-184, 301, 397, 495.

APPOINTMENT (*see* POWER OF APPOINTMENT).

APPORTIONMENT :
E.D. Between beneficiaries, 211-219, 227-232.
On disentail in Scotland, 99.
Discount, on deaths in Great War, 258-259.
Income up to death, 302-303.
Mixed fund, 212, 249.
Relief where margin is small, 117-119, 280.
L.D. Estate insufficient to pay legacies, 385-386.
Income in residuary account, 344–345, 400.
Reduction of L.D. and S.D. where estate exceeds £1,000, 382, 404.

ARREARS :
Of income, inclusion in free estate, 302.

ART, WORKS OF (*see* FURNITURE *and* WORKS OF ART, ETC.).

ASSESSMENT :
And payment of duty, 318-321.
For Income Tax as measure of value :
Benefits from company, 59-60.
Income of company, 60-61.
Real property, 143, 455-456.
Separate, for S.D., 498.

ASSETS :
Business, value for E.D., 293-294.
Discount on quick succession, 276-280.
Company's, as basis of value of shares, 135-138.
Company's, proportion of value liable, 54-69.
Locality of, 101-108.
Partnership, 106, 108, 294.

ASSIGNMENT :
E.D. Interests in expectancy before F.A. imposing or increasing duty, 240-243.
Life interests to companies, 69-76.
Property to companies, 52-69.
L.D. Legacy sold, 372-373.
S.D. Interests in expectancy before F.A. imposing or increasing duty, 448, 455.
Succession sold or alienated, 416, 472-473, 480-481, 501-507.

BANKRUPTCY :
Interest ceasing on, 14-15, 50.
Subsequent direction to pay debts, a legacy, 328.

BEARER BONDS :
Locality, 101-102, 107.

BENEFICIARIES :
Accountable for E.D., 174-175, 178-180.
Accountable for L.D., 369-371.
Accountable for S.D., 487-491.
Apportionment of E.D. between, 211-219, 227-232.
Limitation of liability for duty, 184-186, 378, 496-497.

BENEFIT :
E.D. Arising on death, 82-94.
Ceasing, 23-32.
From company to which property transferred, 58-60.
Reserved in gifts *inter vivos*, 39-48.
L.D. and S.D. Individual, for 1 per cent. rate, 392, 525-529.
Value only ascertainable from time to time, 364-365, 465.
S.D. Reserved in gifts *inter vivos*, 431-433.
BOND (*see also* MORTGAGE) :
Annuity payable under, 29.
For payment of money on death, 149, 421, 516.
Locality, 101-102, 107.
To raise or recoup E.D. (Scotland), 97-98.
BOOKS (*see* FURNITURE *and* WORKS OF ART, ETC.).
BRANCH OFFICE :
Locality of insurance policies issued at, 104.
BRANCH REGISTER :
Of British Company, locality of shares, 102.
BRITISH ASSETS :
What are, 101-108.
BRITISH POSSESSIONS (*see also* DOMICILE *and* PROPERTY OUT OF G.B.) :
E.D. Allowance of duties paid in, 273-276.
Certificate as to E.D., 314-315.
Colonial stocks and shares, locality of, 101-103, 107.
Deductions from property in, 156-157.
Liability of British executors for duty on property in, 166.
List of, to which s. 20, F.A. 1894, applied by Orders in Council, 273-274.
Not a charge on property in, 189, 209.
Resealing, 317-318.
BRITISH TRUST :
E.D. On assets outside G.B., 110-115.
S.D. On assets outside G.B., 433-441.
BUSINESS :
Quick succession, 276-280.
Transfer to company, 57.
Value of assets, 293-294.
CAPITAL (*see also* COMPANY) :
E.D. Sums provided by deceased, 85-90.
L.D. Direction to set apart capital for annuity, 401.
Apportionment between income and, 215-216, 400-401.
CERTIFICATE :
E.D. Amount paid, 228, 311-312, 315-316.
Discharge, 191-196.
For small sums where no grant, 286-289.
Forms of application, 310-316.
Payment in or out of Court, 312-313.
Protection of purchaser, 198.
Duty paid, for grants *de bonis non*, 316.
For resealing, 317-318.
L.D. Discharge before distribution, 378, 405.
In administration by Court, 375-376.
S.D. Discharge, 500-501.
L.P.A. 1925 and L.R.A. 1925, 194-195, 311, 312, 500-501.

CESSER :
Of annuity, secured by bond, 29.
Of annuity or interest, attracting E.D., 23-32.
Of interest and springing up of another, 15, 31.
Of interest of office-holder, 238.
Of interest on bankruptcy, re-marriage, etc., 50, 310, 363, 465-466.
Of interest, value for E.D., 24-25.
Of lease for lives, 238-239.
Of maintenance, 27, 254.
Of outstanding interests (S.D.), 428-433, 535-537.
Of premiums, attracting E.D., 88.
Of right of residence or user of chattels, 30.

CHARGE (*see also* INCIDENCE *and* MORTGAGE) :
E.D. Appointed property, 188, 213.
Certificate of, 228.
Colonial property, 189, 209-210.
Donatio mortis causa, 34, 188.
Entailed personal property, 188.
Gifts *inter vivos*, 188, 210.
Joint property, 188.
Leaseholds, 186-187.
Legacies, 211-213.
Limited owner's, for duty paid on capital, 9, 99, 231-232.
Nominations, 188, 210.
Policies and interests provided by deceased, 188.
Power to, competency to dispose, 11.
Power to raise or recover duty by, 201, 232.
In Scotland, 96-99.
Property not passing to executor as such, 186-189, 207.
Property outside G.B., 187.
Protection of purchasers, 196-200.
Real estate, 187, 207-208, 214.
Registered land, 195, 198-199.
Registered under L.C.A. 1925, 191, 194, 199-200, 231-232.
Settled property, 188.
Transferred to a company, 77.
Shifting to proceeds of sale, 189-190, 196-200.
State entails, 219-220.
Timber, 210-211.
Undivided shares, 205.
Unpaid instalments, 159.
Works of art, etc., 205-206.
L.D. Not a, 373.
Power for professional executor to, 332-333.
S.D. 498-500.
Created by expectant successor, 430, 467-468, 471-472.
Created by owner in possession, 428-429, 471-472.
Power to raise or recover duty by, 491-492.
Protection of purchasers, 504-507.
Registered under L.C.A. 1925, 499-500.
Shifting to proceeds of sale, 498-499, 504-507.
Unpaid instalments, 453.

CHARITY :
E.D. Gifts *inter vivos* to, 36-41, 45.
Payments by, exemption, 238.

CHARITY—*continued.*
E.D.—*continued.*
Promised subscriptions, not deductible, 149.
Release of life interest in favour of, 48, 49.
L.D. Bequest for masses, 331-332.
Income of residue, 347.
Irish, exemption, 390.
Monument may be legacy to, 348.
S.D. Gift with reservation, 432, 537.
Higher rates not payable, 449.

CHATTELS (*see* FURNITURE *and* WORKS OF ART, ETC.).

CHILDREN:
Adopted, 342-343, 443.
Gifts to, preserved from lapse, 12-13, 329, 475, 522.
Legitimacy, 343, 443.
Presumption in joint purchase or investment, 80-82.
When liable to L.D. and S.D., 391-393, 518-529.

CHURCH:
Bequest for benefit of, 348.

CHURCH PATRONAGE (*see* ADVOWSON).

CIVIL SERVANTS' GRATUITIES:
Exemption from duty, 262-263, 390.
Payment without grant of representation, 286.

COLONIAL DUTY (*see also* BRITISH POSSESSIONS):
Allowance against E.D., 273-276.
Deduction from value of property, 157.

COLONIAL PROBATES:
Resealing of, 317-318.

COLONY (*see* BRITISH POSSESSIONS *and* PROPERTY OUTSIDE G.B.).

COMMITTEE OF LUNATIC:
Accountable for E.D., 173, 175-176.
,, ,, S.D., 487.

COMMUTATION:
E.D. 141-142, 161-163.
Aggregation, 130.
Certificate of discharge, 193-194.
Form of account, 309.
Life interest determinable, allowance for, 310.
Practice, 309-310.
L.D. 356, 363, 402, 404.
S.D. 163, 469-471, 503-504.
Form of account, 538.

COMPANY:
Benefits received from, attracting E.D., 58-60.
Locality of debt due from, 102-104.
Locality of stock and shares in a, 101-103, 107-108.
Quick succession, no discount, 276, 279.

COMPANY—*continued.*
Reversion purchased before F.A., 1894, 455.
Total assets of, 63-66.
Total income of, 60-61.
Transfer of life interest to, attracting, E.D., 69-76.
Transfer of property to, attracting, E.D., 52-69.
Value of shares, 66-67, 69, 134-139, 290-292.

COMPENSATION:
Enfranchisement of copyholds, 304, 460-461.
For death of employee, not liable to E.D., 94.
Payment without grant on death of dependant, 287.

COMPETENT TO DISPOSE:
E.D. 8-13.
Accretion under Wills Act, 1837, s. 33, 12.
Definition, 8.
Executor accountable as to personal property, 164-167.
Person having general power of appointment, 10.
Person having general power of revocation, 11.
Person having general power to charge, 11.
Reverter to settlor, 251-252.
Settled property not exempt where deceased is, 243-248, 250.
Tenant in tail, 9.
S.D. 452-454.

COMPOSITION:
E.D. 194, 356-357, 469.
L.D. 356-357.
S.D. 469.

COMPROMISE:
L.D. 337-338.
S.D. 451.

CONDITION:
Legacy subject to, 330-332.

CONFIRMATION (*see* REPRESENTATION).

CONSANGUINITY:
L.D. and S.D., 341-343, 365, 443.

CONSIDERATION (full, in money or money's worth):
Debts, 148-149.
Exemption from E.D., 238-240.
In question of gift with reservation, 44-48.
In question of policies, etc., provided by deceased, 90-92.
Exemption from S.D., 412-413, 516-517.

CONSIDERATION (partial):
E.D. 46-47, 240.
S.D. 413.
Allowance for property surrendered, 468, 485-486.

CONSULAR COURT FEES:
Allowance against E.D., 274, 299.

CONTINGENCY :
E.D. Commutation cases, 161, 310.
Reversion expectant on, value for, 142, 296.
L.D. 358, 363-364.
S.D. 465-466.

CONTINUING ANNUITIES :
Deduction from property passing, 153-155.
Provided by deceased, 89.
Value for E.D., 28, 307.

CONTRACT (*see also* COVENANT) :
Benefit " by contract or otherwise," 39-41, 48-49, 51, 73.

CONTROL OF A COMPANY :
Rules for valuing shares, 135-138.

CONVEYANCE :
Of property to Commissioners in satisfaction of duty, 160, 486.

COPYHOLDS :
Deductions against value, 304, 460-461, 532-533.
Value of manorial rights, 300, 462.

CORPORATION :
Cesser of interest of corporation sole, exempt from E.D., 238.
Chattels given to, exempted from duties, 263-264, 383-384, 515.
Chattels sold to, when exempt, 266, 384, 516.
Loan issued by, when free of duty, 237.

CORRECTIONS AND CORRECTIVE AFFIDAVIT :
E.D. 160-161, 305-306.
Fixed duty, 120.
Value of real estate or leaseholds, 301.
L.D. 363-366, 404-405.
S.D. 465-467, 468, 538-539.

COSTS :
Liability to L.D., 332-333.
Payment into or out of Court, 377.
Raising and paying E.D., 171, 201-202, 229, 231-232.
Sale, not deductible against value for E.D., 133, 289-290.
Valuation, 134.

COTTAGES, Country (*see* AGRICULTURAL PROPERTY).

COUNTY COUNCIL (*see* CORPORATION).

COUNTY COURT :
Appeal, 184.
Apportionment of E.D. between beneficiaries, 229-230.

COURT :
Administration action, provision for duty, 375-378, 489.
Appeal from Commissioners, 183-184, 301, 397, 495.
Apportionment of E.D. between beneficiaries, 229-230.
Payment into, of legacy or residue, 213, 377-378.
Payment out of, 212-213.
Without grant of representation, 287.

COURTESY ESTATE (*see* CURTESY ESTATE).

COVENANT :
To leave specific sum or share of residue (L.D.), 330.
To pay money on death :
No deduction in Inland Revenue Affidavit, 148-149.
When liable to S.D., 421.
Whether E.D. deductible, 218-219, 224.
Whether S.D. deductible, 508, 509.

CROPS :
Inclusion of value for E.D., 293-294.

CROWN :
Debts :
Death duties are, 180, 378, 487.
No limitation of liability, 186, 378, 496.
Entails :
Aggregation, 124.
Incidence of E.D., 219-220.
Value for E.D., 22-23.
Taking under intestacy, liable to E.D., 8.

CUMULATION OF DUTIES :
E.D. 17-20.
L.D. 336-337.
S.D. No cumulation, 473-474.

CURTESY ESTATE :
E.D. On cesser, 244.
S.D. On Cesser, 411, 445.

DEATH :
Before F.A., 1894, old duties still payable, 17-20.
On active service, 129-130, 256-261, 386-387, 517.
Property passing on, 4, 13-14.
S.D. must be referred to a, 413-415.

DEATH DUTIES :
Colonial and Irish, allowance against E.D., 273-276.
Composition in complicated cases, 159, 255, 274.
Definition (*see* INTRODUCTION).
Foreign, 157.
Freedom from, of Government securities, 236-237, 389-390, 518.
Irish, allowance against L.D. and S.D., 441.
Old (*see* ACCOUNT DUTY, PROBATE DUTY *and* TEMPORARY ESTATE DUTY).
Payment of, by Government securities, 318-321, 347, 405, 539.
Remission after twenty years, 186, 356-357, 469.

DEBTS (*see also* ALLOWANCES) :
E.D. Allowance for, 148-152.
Book debts, value of, 294.
Due to persons outside G.B., 155-156.
Guarantee, 148, 150-151.
Income Tax or Sur Tax, 151.
Incurred by life tenant to purchase reversion, 96, 150.
Incurred for deceased's own benefit, 149-150.

DEBTS—*continued.*
E.D.—*continued.*
Locality, 103-105, 108.
Married woman, of, 151-152.
Mortgage, 120-121, 148-153, 292.
Voluntary, 148-149.
L.D. Covenant, 330, 399.
Deduction against residue, 399.
Direction to pay debts of another, 327-328.
Direction to pay testator's own, 328.
Release of, 327.
S.D. Covenant, 421, 508, 509.

DECEASED :
Definition (*see* INTRODUCTION).
Definition for L.D. and S.D. under F.A., 1910, 443-444, 519-523.

DEDUCTIONS (*see* ALLOWANCES).

DEEMED TO PASS :
Property, for purpose of E.D., 4, 13-14.

DELIVERY :
Account, 173, 181-183, 185, 306.
Inland Revenue Affidavit, 167-168, 182-183, 282.

DEPRECIATION :
By reason of deceased's death, 134.

DEVOLUTION :
E.D. Payable on each, 17-21, 243.
L.D. Payable on each, 336-337.
S.D. Distinction between disposition and, 410-411, 445-446.
Predecessor under, 411.

DILAPIDATIONS :
Deduction for liability, 303-304.
Payment affecting allowance for repairs, 533.

DISCHARGE (*see also* CERTIFICATE) :
Of life-rent, 96.

DISCLAIMER :
L.D., 328.

DISCOUNT :
E.D. Commutation cases, 141, 161, 309-310.
Not allowable when duty paid within a year, 158.
On mortgage subject to restriction, 292.
On policy of insurance, 293.
Quick succession, 276-280.
L.D. 358, 361, 395-396.
S.D. 453, 463, 464, 530, 533, 534, 536.
In killed-in-war cases, 258, 386, 517.

DISCRETIONARY TRUST :
Liability to E.D., 16-17.
Settlor a beneficiary, 41-42.

DISENTAIL (*see also* ENTAILED PROPERTY *and* RESETTLEMENT) :
Payment for consent of heirs, 96, 99, 150.

DISPLACED SUCCESSION :
S.D., 474-475.

DISPOSITION :
Before F.A., 1894, allowance of old duty, 267-268.
,, exemption from aggregation, 130-131.
,, partial exemption from E.D., 250.
,, to purchaser or mortgagee, 240-243, 455.
Before other Finance Acts, to purchaser or mortgagee, 241-243, 448.
Distinction between devolution and, 411-412.
For evading S.D., 411.
Trust, exemption from E.D., 35-36, 238.
Voluntary, during lifetime of deceased (*see* GIFTS *inter vivos*).

DIVORCE :
Effect on E.D., 247, 249.
Effect on L.D. and S.D., 342.

DOCUMENT :
Deposit of copy, limitation of liability, 185, 496.

DOMICILE :
E.D. As affecting property in G.B., 5.
As affecting property outside G.B., 110-114.
Evidence of, 297.
L.D. Definition, 388-389.
Exemption where domicile outside G.B., 338-339, 387-389.
S.D. 433-441.
As affecting War Stocks, 236-237, 389-390, 518.

DONATIO MORTIS CAUSA :
E.D. 32-34.
A charge, payable by donee, 188, 207.
Property capable of being given, 33.
Property outside G.B., 114.
L.D. 327, 341.

DOWER :
E.D. on cesser, 244.
S.D. on cesser, 411, 445.

DUAL TAXATION (relief from) :
E.D., 273-276.
L.D. and S.D., 441.

DUPLICATE REGISTERS :
Locality of shares, 102.

DUTY FREE (*see* FREE OF DUTY).

ELECTION (*see also* OPTION) :
Allowance for property given up, 468.

EMPLOYEES' FUNDS :
Liability to E.D., 92-94.

EMPLOYERS' LIABILITY ACTS:
Compensation for death, not liable to E.D., 94.

ENGLISH ASSETS:
What are, 101-108.

ENLARGEMENT OF INTEREST:
E.D. 15, 31, 255-256.
S.D. 485-486.

ENTAILED PROPERTY:
E.D. Aggregation, 127.
Charge of duty, 188.
Competent to dispose, 9-10.
Disposition by will, 188.
Failure of interest of remainderman, 9-10.
Is property settled otherwise than by deceased's will (England), 127.
Personalty, 166, 188.
Scottish, 94-99.
Settled by State, 22-23, 124, 219-220.
S.D. Disposition by will, 454.
Payable on capital, 452-453.
Scotland, 454.
Predecessor on death of tenant in tail, 411.
Resettlement, 411-412, 478-480, 482-483.

ESCHEAT:
To Crown, 8.

ESTATE BY ITSELF:
E.D. Annuities arising, 93-94.
Entailed property, when not part of, 127.
Interests in expectancy when not part of, 121, 127.
Joint property, when not part of, 121, 127.
Not exceeding £1,000, 121-122, 125-128.
Policies, 83.
Property in which deceased never had an interest, 123-125.
Property settled before F.A. 1894, 130-131.
Transfers to companies, 67, 75, 130.
Works of art, etc., 265.

ESTATE DUTY:
Abatement where margin small, 117-119.
Accountable persons (*q.v.*), Chapter III., 164-203.
Adjustment between beneficiaries, 227-232.
Aggregation (*q.v.*), 122-133.
Agricultural property, 143-145.
Allowances (*q.v.*), 148-157, 267-281, 303-305.
Appeals, 183-184, 301.
Apportionment, 211-219.
Certificates of discharge, 191-196, 198, 310-316.
Charge on property, 186-191.
Commutations (*q.v.*), 141-142, 161-163.
Corrections, 160-161, 305-306.
Deduction against value for ademption and hotchpot, 210.
Deduction value for L.D., 348, 351, 355, 398.
Deduction value for S.D., 453, 457-458, 460, 464
Discretionary trust, 16-17, 41-42.
Enlargement of interest, 15, 31, 255.

ESTATE DUTY—*continued.*
Exemptions (*q.v.*), Chapter IV., 233-267.
Forms, 282-285, 305-309, 322.
Freedom from, under terms of will, 220-227.
Incidence (*q.v.*), Chapter III., 203-232.
Instalments (*q.v.*), 159.
Interests in expectancy (*q.v.*), 139-143.
Limitation of liability (*q.v.*), 184-186, 197-198.
Payment, 318-321.
Payment by transfer of land, 160.
Payment by transfer of securities, 318.
Powers of raising, 200-203.
Practice (*q.v.*), Chapter V., 282-322.
Property on which payable, Chapter I., 4-115.
Annuities (*q.v.*),
Donatio mortis causa, 32-34.
Free estate, 5-8.
Gifts *inter vivos*, (*q.v.*) 34-48.
Income to death, 302-303.
Interests arising, 82-94.
Interests ceasing, 23-32.
Joint property (*q.v.*), 77-82.
Policies (*q.v.*), 82-94.
Property of which deceased competent to dispose, 8-13 (*see also* COMPETENT TO DISPOSE).
Property out of G.B. (*q.v.*), 100-115.
Property transferred to companies, 52-77.
Scottish entailed estate, 94-99.
Settled property, 13-23.
Rates and amount (*q.v.*), Chapter II., 116-163.
Ad valorem duty, 116-119 (*see also* AGGREGATION).
Fixed duty, 119-121.
Remission (*q.v.*), 186.
Timber, 145-148.
Time for payment, 157-158, 167.

ESTATE OWNER:
Accountable for E.D., 178-180.
Accountable for S.D., 490-491.

ESTATES *PUR AUTRE VIE*.
E.D., 21-23.
L.D., 330.

EVASION:
E.D. 52-53, 150, 252.
S.D. 411.

EVIDENCE:
As to value, 133-134, 168-169, 173, 181-183, 289, 291-295, 494-495.
Company's accounts, 76-77.
Domicile, 297.
Payment of E.D. (*see* CERTIFICATE).
Colonial duties, 298-299.
Payment of S.D. 500-501.

EXCESS:

E.D. Abatement where margin small, 117-119.

L.D. and S.D. Estates slightly exceeding £1,000, 382, 404, 513-514.

EXCESS PRINCIPAL VALUE:

Agricultural property, 144-145.

EXECUTOR:

E.D. Accountable, 164-173.
Definition, 165, 170.
Executor *de son tort*, 165, 170, 282.
Land, 169-173.
Limitation of liability, 184-186.
Limited grant. 165-166, 187.
Optional payments, 169, 204.
Powers of raising duty, etc., 200-202.
Powers of recovery from beneficiaries, 227-230, 232.
Property out of G. B. 166, 187.
Property passing to, as such, 186-189.
Settled land, 170-172.
Undivided shares, 167, 170.
Vitious intromitter, 165.
Works of art, etc., 167.

L.D. Accountable, 336, 367-369, 376-377.
Allowance of duty paid under void probate, 366.
Certificate of discharge before distribution, 378, 405.
Duties of, 344, 394-402.
Entitled to reimbursement, 373, 375.
Executor *de son tort*, 336-337, 367-368.
Legacy to, 332-333.
Legacy to executors of a deceased person, 328-329.
Payment of fund into Court, 377-378.
Retainer for his own benefit, 368-369.
Settled fund, 371.

S.D. Accountable, 488, 490-491.
Executor *de son tort*, 169-170.

EXEMPTION:

E.D. Chapter IV., 233-267.
Abatement where estate slightly exceeds step in scale, 117-119.
Advowson, 266.
Annuity provided, not exceeding £25, 263.
Army pensions, 262.
Benefit from charity, 238.
Cesser of life interest of widow or widower under intestacy, 244.
Discretionary trust, 16.
Enlargement of interest, 255.
Estate not exceeding £100, 234-235.
Failure of interest, 252-255.
Gifts *inter vivos*, 35-38, 235-236.
Government loans, 236-237.
Gratuities, 262-263.

EXEMPTION—*continued.*
E.D.—*continued.*
Immoveable property out of G.B., 236.
India, pension payable by Government of, 261.
Interest in expectancy, when, 240-243.
Interest of office holder, 238.
Killed in war, 256-262.
Married women, restoration of interest, 250.
Moveable property out of G.B. where domicile foreign, 236.
National debt, gifts for reduction, 235-236.
Reverter to settlor, 250-252 (Nos. 13 and 14).
Sailor, soldier and airman dying in service, 256-262.
Sales before F.A., 1894, 240-243.
Sales for full money consideration, 238-240.
Settled property on which E.D. paid on death of deceased's spouse, 243-247.
Similar cases where Probate Duty or Account Duty payable, 247-249.
Timber until sold, 145-148.
Trust property, 238.
Trustee, entitled to annual sum, 238.
War loans, 236-237.
Works of art, etc., given to public bodies, 263-264.
Works of art, etc., until sold, 264-266.
When sold to certain public bodies, 266.
S.E.I. Dispositions before F.A., 1894, 268.
Free estate not exceeding £1,000, 122.
Wife's or husband's the only life interest, 268.
L.D. Chapter IX., 379-393.
Abatement where estate slightly exceeds £1,000, 382.
At 1 per cent., 390-393.
Chattels given to corporations, 383.
Domicile outside G.B., 387-389.
Free estate not exceeding £1,000, 381.
Government loans, 389-390.
Gratuities, 390.
Irish charity legacies, 390.
Killed in war, 386-387.
Money left to pay L.D., 351, 384-386.
Personal estate under £100, 381.
Provision for maintenance of animals, 331.
Royal Family, 379-380.
Sailor, soldier or airman, 386-387.
Settled chattels, 382-383.
Specific legacies under £20, 380-381.
Works of art, etc., 383-384.
S.D. Chapter XIV., 511-529.
Abatement where estate slightly exceeds £1,000, 513-514.
Advowson till sold, 516.
Annuity to trustee, 415.
At 1 per cent., 518-529
Change of investment, 421.
Chattels given to corporations, 515.
Free estate not exceeding £1,000, 513.
Government loans, 518.

EXEMPTION—*continued.*
S.D.—*continued.*
Higher rates, 449-450.
Immoveable property out of G.B., 433-434.
Killed in war, 517.
Money left to pay S.D., 517.
Moveable property under non-British title, 433-441.
Policy of insurance, 516.
Property liable to L.D., 514.
Royal Family, 512.
Sailor, soldier or airman, 517.
Settled chattels, 514-515.
Successions under £100, 512-513.
Successor taking under his own disposition, 471-472, 517.
Timber, until sold, 456-457, 516.
Transactions for full money consideration, 412-413, 431-432, 516-517.
Works of art, etc., 515-516.
From aggregation (*see* AGGREGATION).

EXPECTANCY (*see* INTERESTS IN EXPECTANCY).

EXPENSES (*see also* SALE):
Of administration of property outside G.B., 156.
Of raising and paying E.D., 171, 201-202, 229, 231-232.
Of sale:
E.D. 133, 289-290.
L.D. 348, 384, 399.
S.D. 515, 535.

FAILURE OF INTEREST:
Effect on E.D., 252-255.

FIFTEEN THOUSAND POUNDS:
Limit for L.D. and S.D. at 1 per cent., 392, 520-525

FINE:
Deduction in S.D. account, 460-461.
For renewal of lease, S.D. on, 430-431.

FIRST SUCCESSION:
Arising of, 443-448, 518, 519.

FIXED DUTY:
E.D. 119-121.

FOREIGN DEATH DUTY:
Deduction against foreign personal estate, 157.

FOREIGN DEBTS:
Deduction of, 155-156.

FOREIGN DOMICILE (*see* DOMICILE).

FOREIGN EMBASSY:
Property at (E.D.), 106.

FOREIGN PROPERTY (*see* PROPERTY OUT OF G.B.).

FOREIGN SOVEREIGN:
Property of, when liable to E.D., 106.

FORMS:
E.D. and S.E.D., 282-285, 305-318, 321-322.
L.D., 394-402, 404, 406.
S.D., 530-539.

FORUM OF ADMINISTRATION:
E.D. 110-115.
S.D. 433-441.

FRAUD:
Certificate of discharge obtained by, 195.
Purchaser without notice not affected by, 198.

FREE ESTATE:
Incidence of duty, 203-207.
Liability to E.D., 5-8.
Not exceeding £500 gross, 119-121.
Not exceeding £1,000:
E.D. 121-122, 125-128.
L.D. 381.
S.D. 513.
Property out of G.B., 111.
Slightly exceeding £1,000 (L.D. and S.D.), 382, 404, 513-514.

FREE OF DUTY:
By direction of testator or settlor:
E.D. 220-227.
L.D. 351-355.
S.D. 508-510.
Exemptions (*q.v.*).

FRIENDLY SOCIETY:
Liability of benefits to E.D., 92.
Payments without grants of representation, 286.

FUND IN COURT:
Grant of representation not required, 287.
Provision for duties, 312-313, 375-377, 489.

FUNERAL EXPENSES:
Allowance of, 148, 151, 305, 348, 399.

FURNITURE (*see also* WORKS OF ART, ETC.):
E.D. Cesser of right of user, 30-31.
Value, 293.
L.D. Settled, 370, 382-383.
S.D. Settled, 514-515.

GENERAL POWER:
Of appointment (*see* POWER OF APPOINTMENT).
To charge, 11.
To revoke settlement, 11-12, 40.

GIFTS *INTER VIVOS*:
E.D. Charge for duty, 188.
Foreign property, not liable to E.D., 114.
Free of duty, 354.
Imperfect gift, 39.
Incidence of duty, 210.
Life interest, 49.
Moral obligation, no exemption, 39.
National debt, for reduction of, 235.
No L.D. or S.L. where no reservation, 36.
Perfected within three years, liable to E.D., 39.
To company, 52-69.
Value, 34-35.
Within three years, 34-39.
EXEMPTIONS:
Charities, gift more than one year from death, 36-37.
Marriage consideration, 37-38.
Normal expenditure, 38.
Not exceeding £100, 38.
Property out of G.B., 114.
Policies, 86.
With reservation, 34-36, 39-48.
Power of revocation, 11-12, 40.
Release more than three years before death, 39-40.
Transaction for value, 44-48.
Trust property, 35-36.
Unenforceable benefit retained, 41.
S.D. 431-433.
Policy of assurance, 420.

GOODWILL:
Included in "total assets" of company, 63.
Value for E.D., 294.

GOVERNMENT SECURITIES:
Payment of duties by, 318-321, 347, 405, 539.
Free of taxation, 236-237, 389-390, 518.
Transfer of small sums without grants of representation, 287.
When resealing unnecessary, 317.

GRANDCHILDREN:
Individual benefit for 1 per cent. L.D. or S.D., 518-520, 525-529.

GRANT OF REPRESENTATION (*see* REPRESENTATION).

GRATUITY:
Not liable to death duties, 262-263, 390.

GREAT BRITAIN:
Definition for death duty purposes, 100-101.

GREAT WAR:
Remission of duties on deaths in:
E.D. 256-261.
L.L. 386-387.
S.D. 517.
Securities issued free from taxation, during, 236-237, 389-390, 518.

GROSS ESTATE (*see* FIXED DUTY).

GROUND RENTS :
E.D. Not an interest in expectancy, 7, 143.
S.D. Where successor competent to dispose, 431.
Where successor takes for life, 429-431.

GUARANTEE DEBT :
When allowable (E.D.), 148, 150-151.

GUARDIAN :
Accountable for E.D., 173.
Accountable for S.D. 487.

HEIRLOOMS (*see* FURNITURE *and* WORKS OF ART, ETC.).

HIGHER RATES :
S.D. 448-451.

HISTORIC INTEREST (*see* WORKS OF ART, ETC.).

HOLDER OF OFFICE :
Interest as, exemption from E.D., 238.

HUSBAND AND WIFE :
E.D. Cesser of *jus mariti*, 250.
Cesser of life interest under intestacy, 244.
Deduction of Income and Sur Tax and debts, 151.
Domicile, 389.
Exemption of settled property, 243-250.
Gifts between, in Scotland, 11.
Joint property, 80-81.
Policies, etc., provided by husband, 82-90, 92-94.
Settlement by surviving spouse, 250.
S.E.D. Exemption, 243, 268.
L.D. & S.D. Effect of divorce, 342.
Rate where one takes benefits from relatives of the other, 341-342.
L.D. Exemptions, 390-393.
S.D. Cesser of life interest under intestacy, 411, 445.
Exemptions, 449, 518-529.

ILLEGITIMATE CHILD :
As consideration for settlement, 149.
Domicile of, 388.
Liable to L.D. or S.D. as stranger, 343, 443.

IMMOVEABLE PROPERTY :
Definition, 109-110.
In G.B., liable to British duties, 5, 339, 433-434.
Outside G.B. not liable to E.D. or S.D., 110, 433-434.
Unless comprised in British partnership or trust, 105-106, 108, 434.

IMPROVEMENTS :
Before sale, 290.
By company, 74-75.
By successor, 468, 532.
Quick successions, 278.

INALIENABLE :
E.D. on State entails, 22-23, 124, 219-220.

INCIDENCE OF DUTY :
E.D. Adjustment, 96-99, 227-232.
Allowances, 209.
Annuities, 211, 214, 216-217, 223, 224, 229.
Appointments under powers, 207, 213, 222, 223.
Apportionment, 211-216.
Capital and income, 215-216.
Colonial property, 209.
Direction in will, etc., 220-227.
Donatio mortis causa, 207.
" Free of duty," 220-227.
Free personal estate, 203-207.
Gift *inter vivos*, 210.
Interests in expectancy, 206.
Joint property, 188.
Legacies, 212-213, 222-227.
Mixed fund, 212.
More than one death, 208-209, 211, 213, 225-227.
Nominations, 210.
Non-deductible debts, 218-219, 224, 229.
Options, 208, 214.
Order of administration, 203-204, 212-213.
Portions, 211, 222, 229.
Property out of G.B., 207.
Real property, 207-208, 211.
Scottish entails, 96-99.
State entails, 219-220.
Testamentary expenses, 203, 207, 220-221.
Timber, 210-211.
Undivided shares, 205.
Works of art, etc., 205-206.
L.D. 373-375.
Annuity charged on legacy, 369-370.
Compromises, 337-338.
Conditional legacies, 330-331.
Contingent legacies, 371.
" Free of duty," 351-355.
Purchasers, 373.
Settled legacies, 349, 359-361.
Successive deaths, 336.
S.D. 507-510.
" Free of duty," 508-510.
Purchasers, 502-504.

INCOME :
E.D. Accumulations, 17, 244, 254.
Apportionment to date of death, 302-303.
Discretionary trust, 16-17.
Incidence of duty as between capital and, 215-216.
Of company, 60-61.
L.D. Ascertainment of, 361-363.
Direction for maintenance, 321.
Fluctuating, 364-365.
Received or accrued since death, 343-349, 395, 400-401.
S.D. Ascertainment of, 459-462, 464.
Fluctuating, 462, 465.

INCOME TAX (*see also* ASSESSMENT):
Annuity free of, 25, 365.
Charity, income of residue, 347.
Deduction from benefits from company, 59.
Deduction from income of company, 60.
Married woman, of, 151.
No deduction for:
Against annual value for L.D., 402.
Against annual value for S.D., 460-464.
Against interest on duty, 158.

INCUMBRANCE (*see* ALLOWANCES *and* MORTGAGE).

INDIA:
E.D. Allowance of Indian duty, 273.
Military pensions and annuities exempt, 261.

INDIVIDUAL BENEFIT:
Exemption from L.D. and S.D. at one per cent., 392-393, 525-529.

INFANT:
Child, benefit not exceeding £2,000, no L.D. or S.D., 391-393, 518-520, 525-529.
Competent to dispose, 8.
Maintenance, 254, 331, 364.
Payment of legacy into Court, 377.

INLAND REVENUE AFFIDAVIT:
Corrections, 160-161, 305-306.
Death before F.A., 1894, 19.
E.D. payable on, 164-169.
Forms, 282-285, 316.
Inclusion of income, 302-303.
Option as to reversion exercised when grant obtained, 141.
Property to be specified in, 168, 289.
Time for payment on, 167.

INSTALMENTS:
E.D. Annuities provided by deceased, 89, 159.
Crown entails and State annuities, 159.
Form, 306.
Real estate, 159.
All instalments payable on sale, 157-159.
Unpaid instalments remain a charge on death of owner, 159.
L.D. 357-358, 361, 395-396, 402.
S.D. Annuities, 530.
Forms, 535.
Where competent to dispose, 453, 458.
Where not competent to dispose, 462, 465.

INSURANCE COMPANY (*see also* POLICIES):
Branch office in different country, 104.
Not a predecessor, 516.
Payment without English grant, 288.
Policies in foreign, 114, 437.

INTEREST (IN PROPERTY):

E.D. Arising on death, 82-94.
Assignment of, 48-52.
Ceasing on death, 23-32.
Discretionary trust, 16-17.
Enlargement of, 15, 31, 255-256.
Failure of, 252-255.
In land or a business, quick succession, 276-280.
Property in which deceased never had an, 123-125.
Provided by deceased, 82-94.
Pur autre vie, 21-22.
Release of, 48-52.
Reservation of, on gift, 39-44. 114.
Transfer to company, 69-76.
S.D. Enlargement of, 485-486.
Reservation of, on gifts, 431-433.

INTEREST IN EXPECTANCY:

E.D. Aggregable with rest of estate, 6, 139-140.
Option as to aggregation with small estate, 121, 127, 140.
Commutation, 141-142, 309-310.
Contingent, 296, 310.
Expectant on more than one life, 242, 251, 296.
How paid, 6-7, 139-143.
Incidence, 206.
Life tenant also entitled to, 7, 20, 51-52, 142.
Meaning of, 6, 143.
Old duties payable on, 17-20.
Option to defer payment, 6-7, 139-141.
Purchase by life tenant, deduction of cost, 96, 150.
Sold or mortgaged before F.A. imposing or increasing duty, 240-243.
Subject to over-riding power of appointment, 142.
Transfer to company, 69-76.
Value, 141-142, 295-296.
Where the property itself passes, 7, 20, 142.
S.E.D. Allowance of, against E.D., 271.
L.D. 355-356, 402-403.
S.D. Alienation of, 472-473, 476-483.
Is always a succession, 415-417.
Liability of purchaser, 501-507.
Mortgage of, 467-468.
Sale before F.A., 1894, 455.
Sale before F.A., 1910, 448.
Transfer creating new succession, 474-483.
Transmission of, 473-474.

INTEREST ON DUTY:

E.D. 119, 158-159, 321.
S.E.D. Repayment of, 268-269, 272-273, 308-309.
L.D. 344, 345, 349, 350, 369, 375, 401, 402, 405.
S.D. 453, 458, 463, 530, 531, 535, 539.
Payment by Revenue, 306, 539.
Remission of, 186, 356-357.
Timber. 145, 147, 456, 537.

INTERVAL :
E.D. Property passing after, 4.
S.D. Entitlement or possession after, 413-415, 417-418.

INTESTACY :
E.D. Payable under, 5, 8.
Not on cesser of life interest of husband or wife, 244.
L.D. Payable under, 325.
S.D. Payable under, 409-411.

INVENTORY (*see also* INLAND REVENUE AFFIDAVIT) :
Forms, 285.
Death before F.A. 1894, 19.

INVENTORY DUTY (*see* PROBATE DUTY).

IRELAND (*see also* IRISH FREE STATE *and* NORTHERN IRELAND) :
Duty paid in, exemption from E.D. on death of second spouse, 244, 248.
Legacy to charities in, 390.
Remission of duty, where death due to disorders, 261, 387, 517.

IRISH FREE STATE :
A separate unit for Death Duty purposes, 100-101.
Certificate of payment of E.D., 315.
Relief from double taxation :
E.D., 275-276.
L.D. and S.D., 441.
Resealing (none), 317.

JOINT PROPERTY :
E.D. 77-82.
A charge 188.
Aggregation, 121, 127.
Annuities, 28, 91-92.
Competent to dispose, 9, 78.
Executor accountable for personal property, 166, 173.
Father and child, 80, 82.
Husband and wife, 80-81.
Land, persons accountable, 170, 173, 178-179.
Policies, 92.
Provided by deceased, 78-81.
S.D. 418-420.

JOINTURE (*see* RENT-CHARGE).

KILLED IN WAR :
Aggregation, 129-130.
Exemptions and remissions :
E.D., 256-261.
L.D., 386-387.
S.D., 517.

LAND (*see also* REAL PROPERTY) :
Acceptance in satisfaction of duty, 160, 486.
Accountable persons under Property Acts of 1925 :
E.D., 169-173, 178-180.
S.D., 490-491.

LAND—*continued.*

Capital moneys applicable for duty, 201-202, 230-231, 492-493.
Protection of purchasers:
E.D., 196-200.
S.D., 504-507.
Quick succession, 276-280.
Transferred to company, 52-77.
Undivided shares, 5-6, 167, 170, 205, 534.

LAND CHARGE:

Registered on behalf of limited owner, 231-232.
Registered on behalf of Revenue, 190-191, 194, 199-200, 499, 506-507.

LAPSE:

Gifts to children preserved from, 12-13, 329, 475, 522.
Legacies, 328.

LEASE:

For lives, exemption from E.D. on cesser, 238-240.
Property subject to, not an interest in expectancy, 7, 143.
Succession to property subject to, 428-431, 503-504, 531, 533.
Surrender of, by executors, 304, 399.

LEASEHOLDS:

Acceptance by Commissioners in satisfaction of E.D. and S.D., 160, 486.
E.D. Annuity charged on, 25, 217.
Charge for duty, 186-187.
Executor accountable, 164-165, 186.
Valuation, 299-301.
L.D. Trust for sale, 325-326, 339.
S.D. Deduction of E.D., 453, 456-458, 460, 464.
Liable to S.D. and not L.D., 325, 409.
Short term, 461.
Trust for sale, 454, 460.
Where successor competent to dispose, 452-455.
Where successor not competent to dispose, 459-464.

LEGACY:

Abatement, 337, 385-386.
Compounded, 337-338.
Conditional, 330-332.
Contingency, 363-364.
Covenant to leave fixed sum or share of residue, 330.
Direction to pay debts, 327-328.
Direction to pay interest on, 344, 526.
Disclaimer of, 328.
Free of duty, 351-355, 385-386.
Inclusion of accretions, 343-349, 395, 400.
Interest in expectancy given as, 355-356, 402-403.
Lapse, 328-329.
Liable to bear proportion of E.D., 212-213.
Payment into Court, 377-378.
Receipt to be obtained, 368.
Release of debt, 327.

LEGACY—*continued.*

Retainer, 343-346.
Sale of, 372-373.
Secret trust, 335-336.
Settled, incidence of L.D., 349, 359-361.
Specific, 344-345, 370-371, 380, 382-384.
Subject to annuity, 358-360, 369-370.
Subject to charge or lien, 349.
Subject to maintaining persons or animals, 330-332.
To children who predeceased testator, 329.
To executor, 332-333.
To Irish charities, 390.
To personal representatives of deceased legatee, 328-329.
To purchase annuity, 357, 358.
Value only ascertainable from time to time, 364-365.

LEGACY DUTY :

Accountable persons (*q.v.*), Chapter VIII., 367-378.
Accumulations, 345.
Advances, 346.
Allowance of 1 per cent. duty against E.D., 267-268.
Annual value for, how ascertained, 361-365, 402.
Annuities, 357-359, 395-396.
Commutations, 356, 363, 402-404.
Composition, 356-357.
Compromises, 337-338.
Conditional legacies, 330-332.
Contingency, 255, 259, 262, 268, 269.
Corrections, 365-366, 404-405.
Cumulation of, 336-337.
Death of life tenant, 350-351, 402.
Deductions against residue, 348-349, 398-401.
Disclaimer of legacy, 328.
Discount, 358, 361, 395-396.
Domicile out of G.B., 338-339, 387-389.
Donationes mortis causa, 327.
Exemptions (*q.v.*), Chapter IX., 379-393.
Forms, 394-397, 401-402, 404, 406.
Free estate not exceeding £1,000, 381.
Free estate slightly exceeding £1,000, 382.
" Free of duty," 351-355, 385-386.
Incidence of duty (*q.v.*),
Income Tax, annuity free of, 365.
Instalments, 357-358, 361, 395-396, 402.
Interest, 344, 345, 349, 350, 369, 375, 401, 402, 405.
Interests in expectancy, 355-356, 402-403.
Killed in war, 386-387.
Legatee predeceasing, 328-329.
Life interests, 359-363.
Limitation of liability, 378.
One per cent. rate, when chargeable, 390-393.
Payable on each devolution, 336-337.
Payment by transfer of securities, 318-321, 347, 405.
Power of appointment, 333-335.
Practice (*q.v.*), Chapter X., 394-408.

LEGACY DUTY—*continued.*
Property on which payable, Chapter VI., 325-339.
Accretions, 343-349, 395, 400.
Church patronage, 330.
Covenant debt, 330.
Direction regarding debts, 327-328.
Direction to pay E.D. or S.D., 329, 354-355, 384-385.
Donationes mortis causa, 327.
Estates *pur autre vie*, 330.
Gifts to professional executors, 332-333.
Leaseholds on trust for sale, 325-326, 339.
Personal estate directed to be invested in real estate, 326-327.
Provision for, in administration action, 375-375.
Purchaser, when liable, 372-373.
Rates, 340-343.
Reimbursement by legatee, 373-374.
Remission, 356-357.
Repayment, 365-366, 404-405.
Sailor, soldier or airman, 386-387.
Secret trust, 335-336.
Settled furniture, etc., 370, 382-383.
Time for payment, 343-346, 350, 355-356.
Value, 343-351, 355-365, 394-404.
Works of art, etc., 383-384.

LEGATEE:
Accountable for E.D., 175.
Accountable for L.D., 369-372.
Charity, 331-332.
Description of, in account, 394.
Liable to reimburse executor on receiving legacy without deduction, 373-375.
Marrying relation of testator, 341-342.
Predeceasing testator, 12-13, 328-329.
Refusing to give receipt, 373.
Relationship incorrect, correction of duty, 365.
Residuary, rights of, 347.

LEGITIMACY:
As affecting rates of L.D. and S.D., 343, 443.

LIABILITY (*see* ACCOUNTABLE PERSONS, INCIDENCE *and* LIMITATION).

LIFE INSURANCE (*see* POLICY OF ASSURANCE).

LIFE INTEREST:
E.D. Allowance against interest in expectancy, 295-296, 310.
Assignment of, 50-51.
Determinable, 14-15, 50, 310.
Discretionary trust, 16-17.
Enlargement, 15, 31, 255.
Failure before coming into possession, 252-255.
Release, 48-52.
Reserved out of gift, 39-48.
Transfer to company, 69-76.

LIFE INTEREST—*continued.*
L.D. Allowance against advances, 346.
Allowance against interest in expectancy, 355-356, 402-403.
Determinable, 362-364.
Method of assessment, 357-363.
Release, 346.
S.D. Charge for duty, 498.
Determinable, 465-467.
Enlargement, 485-486.
Method of assessment, 458-465.
Release, 451, 470, 483-485.

LIFE TENANT:
E.D. Accountable, 173-175.
Assignment of interest by, 50-51.
Becoming entitled to absolute interest, 15, 31, 51-52, 255.
Entitled to charge for duty paid on capital, 9, 99, 231-232.
Entitled to reversionary interest, 7, 20, 142.
Mortgage by remainderman and, 152-153.
Power of raising duty, 201-202, 232.
In Scotland, 96-99.
Purchase of reversion by, deduction of cost, 96, 150.
Release of interest by, 48-52.
Sale by, 189.
Settled land grant, 166, 170-171, 284-285, 491.
Transferring interest to company, 69-76.
Under intestacy, 244.
L.D. On death of, 350-351, 402.
S.D. Accountable, 487-488.
Mortgage by remainderman and, 467-468.
Mortgages paid off, 410.

LIMITATION OF LIABILITY:
E.D. Executors, trustees and beneficiaries, 184-186.
Purchasers and mortgagees, 197-198.
L.D. 378.
S.D. Executors, trustees and beneficiaries, 496-500.
Purchasers and mortgagees, 504-507.

LIMITED OWNER'S CHARGE:
For E.D. paid on capital, 9, 99, 231-232.

LINEAL ISSUE:
Exemptions from L.D. and S.D. at 1 per cent., 390-393, 518-529.

LOCAL AUTHORITY:
Loans issued by, when free of duty, 237, 389-390, 518.
Works of art, etc., given to, 263-264, 383-384, 515.
Works of art, etc., sold to, 266, 384, 516.

LOCALITY OF ASSETS:
Effect on liability to E.D., 109-115.
Effect on liability to L.D., 338-339.
Effect on liability to S.D., 433-434.
Rules for determining, 101-108.

LUNATIC :
Committee accountable, 173, 487.
Competent to dispose, 8.
Payment into Court of legacy of, 377.

MAINTENANCE :
Cesser of, attracting E.D., 27.
Discretionary trust, 16-17.
Gift for, liable to L.D., 331.
Periodical payments for (L.D. and S.D.), 364-365, 465.
Whether an interest in possession, 254.

MANAGEMENT :
Expenses of, as to property abroad (E.D.), 156.
As to British property (S.D.), 460.

MANOR :
Annual value for S.D., 462.
Value on enfranchisement, 300.

MANUSCRIPTS (*see* WORKS OF ART, ETC.).

MARGIN, SMALL (*see* ABATEMENT).

MARINES (*see* SAILOR).

MARRIAGE (*see also* HUSBAND AND WIFE) :
Allowance for contingency, 310.
As consideration, 148-149, 412-413.
Gifts *inter vivos* in consideration of, exempt from E.D., 37-38.
Release of life interest in consideration of, 52.

MARRIED WOMAN (*see* HUSBAND AND WIFE).

MEMORIAL :
In church, L.D., 348.
On obtaining second grant of representation, 316.

MINES :
Annual value for S.D., 462.

MISAPPROPRIATION :
Of duty by agent, 177, 372, 375, 490.

MISTAKE (*see* CORRECTIONS).

MIXED FUND :
E.D. payable in respect of part of, 249.
Legacies payable out of, 212.

MONEY :
Consideration in money (*see* CONSIDERATION).
E.D. General power to charge, 11.
Left to pay L.D. or S.D., 351, 384-386, 517.

MONUMENT :
Deduction for, against L.D., 348, 399.

MORTGAGE:
E.D. Created by life tenant to purchase reversion, 96, 150.
Free estate, deduction for, 148-150.
Fixed duty cases, 120-121.
Interest in expectancy, before F.A. imposing or increasing duty, 240-243.
Locality, 102-105.
Moveable or immoveable, 109-110.
Power of raising duty by, 201, 232.
In Scotland, 96-99.
Settled property, deduction for, 152-153.
Subject to Rent Restriction Acts, 292.
S.D. Deduction for, 467-468.
Interest in expectancy before F.A. 1894, 455.
,, ,, ,, ,, F.A. 1910, 448.
Predecessor when paid off, 410.

MORTGAGEE:
Limitation of liability, 196-200.
Not liable to S.D. unless he forecloses, 502.
Obliged to furnish information, 182.
Releasing mortgage, predecessorship, 410.

MOURNING:
Deduction of expenses of, 305, 399-400.

MOVEABLE PROPERTY OUT OF G.B. (*see also* PROPERTY OUT OF G.B.):
Definition, 101-110.
E.D. 110-115.
L.D. 338-339, 387-389.
S.D. 433-441.

MUNICIPAL CORPORATION (*see also* WORKS OF ART, ETC.):
Chattels given to, 263-264, 383-384, 515.
Chattels sold to, 266, 384, 516.
Loans issued by, when free of duty, 237, 389-390, 518.

NATIONAL DEBT:
Gifts for reduction of, 235-236.

NATIONAL INTEREST (*see* WORKS OF ART, ETC.).

NATIONAL PURPOSES (*see* WORKS OF ART, ETC.).

NECESSARY OUTGOINGS:
Deduction for:
E.D. 299-300.
S.D. 459-462.
Timber, 147, 456.

NEW SUCCESSION:
Displacing original succession, 474.
Distinction from alienation, 476-483.

NEWSPAPER INSURANCE:
Liability to duty, 8.

NOMINATION:
By deceased partner, 87, 294.
Incidence of E.D., 166, 210.
Payments under, without grants of representation, 285-289.

NOMINATION POLICY:
Estate by itself, 83, 123-124.
Liability to E.D., 82-94.

NORMAL EXPENDITURE:
Exemption of gifts *inter vivos*, 38.

NORTHERN IRELAND:
A separate unit for Death Duty purposes, 100-101.
Certificate of payment of E.D., 314-315.
Relief from double taxation:
E.D., 276.
L.D. and S.D., 441.
Resealing of grants, 317.

NOTICE:
Of appeal to Referee, 301.
Of charge on registered land, 195, 499, 500.
Of claim to Commissioners, limitation of liability, 185-186, 197-198, 378, 496.
Purchaser without:
E.D., 196-197.
S.D. 504.

OBJECTS OF NATIONAL, ETC., INTEREST (*see* WORKS OF ART, ETC.).

OFFICE HOLDER:
Exempt from E.D., 238.
Trustee, entitle to annuity as such, 238, 415.

OFFICER:
Partial exemption from death duties, 256-262, 386-387, 517.

ONCE A SUCCESSION, ALWAYS A SUCCESSION:
S.D. 415-417.

ONE PER CENT. L.D. AND S.D.:
Allowance against E.D., 267-268.
Exemption from L.D., 390-393.
S.D., 518-529.
In s. 33 Wills Act cases, 329, 475, 522.

ONE THOUSAND POUNDS LIMIT:
Aggregation, 121, 125-128.
Exceeded slightly, E.D., 117-119.
L.D., 382, 404.
S.D., 513-514.
Free Estate, L.D., 381.
S.D., 513.
Individual benefit, L.D., 392, 520-529.
S.D., 520-529.

OPTION :
As to allowance of prior duties against E.D., 267.
To defer payment of E.D. on interest in expectancy, 6-7, 139-141, 295.
To defer payment of L.D. on interest in expectancy, 355-356, 402-404.
To purchase, 134, 214.
To take share of residue in specie, 208.

ORDERS IN COUNCIL :
E.D. Allowance of Colonial duty under F.A. 1894, s. 20, 273-275.

ORDINARY RESIDENCE :
Affecting exemption of War securities, 237.

OUTGOINGS :
E.D. Deduction for, 299-300.
S.D. Deduction for, 459-462.
Timber, 147, 456.

OVERPAID DUTY (*see* CORRECTIONS).

PAROL TRUST :
E.D. Of property in joint names, 79.
L.D. Of property given by will, 335-336.
S.D. Gift with reservation, 432.

PARTIAL CONSIDERATION.:
E.D. 46-47, 240.
S.D. 413.
Allowance for property surrendered, 485-486.

PARTIES TO A MARRIAGE (*see* HUSBAND AND WIFE).

PARTNERSHIP :
Goodwill, 294.
Locality of assets, 106, 108.
Provision for widow, children, &c., 87-88, 294.
Real estate devolves as personal estate, 327.
S.D. under, 413.
Value for E.D. of assets of, 294.

PASSING :
Meaning of, 4, 13-14.

PAYMENT :
Of duties by transfer of Government Stocks, 319-321.
Of duties by transfer of land, 160, 486.
Of duties personally or by post, 318.
Of E.D., time for, 157-158, 167.
Of fixed duties, by adhesive stamps, 120, 321.
Of L.D., time for, 343-346, 350, 355-356.
Of S.D., time for, 451-452.
Without grant of representation, 285-289.

PAYMENT IN OR OUT OF COURT :
Certificates, 312-313.
Legacy, 377-378.
Provision for death duties, 375-377.

PENALTY :
E.D. 76-77, 181-183, 282.
L.D. 365, 368-369, 373.
S.D. 495.

PENSION :
Charitable, exempt, 238.
Indian Government, exempt, 261.
Purchased or provided by deceased, 87-88, 92-94.
State, how E.D. paid, 23, 124-125.
Unenforceable, exempt, 262-263.

PERPETUAL ANNUITY :
E.D. 23, 124-125.
S.D. 433, 536-537.

PERSONAL COVENANT :
Annuity secured by, 29.
Reservation secured by, in case of gift, 42.
Sums payable on death, S.D., 421.
Voluntary, no deduction for E.D., 148-149, 218-219, 224, 229.

PERSONAL PROPERTY :
E.D. Definition for E.D., 5.
Free, in G.B., executor alone accountable, 164-167, 173-174.
L.D. Directed to be invested in real estate, 326.
Exempt where domicile out of G.B., 338, 387-389.
S.D. Absolute interest, 457-458.
Alienation of succession, 472-473.
Charge for duty, 498.
Does not include leaseholds, 409.
Life interest, 458-459, 464-465.
Settled, when duty payable on *corpus*, 457-458.
Transmission of succession by death, 473-474.

PLATE (*see* FURNITURE *and* WORKS OF ART, ETC.).

POLICE PENSIONS :
Duty not claimed, 263.

POLICY OF ASSURANCE :
E.D. Aggregation, 83.
Deduction of mortgages on, in fixed duty cases, 120-121.
Donatio mortis causa, 33.
Foreign office, in, 104, 114.
Gift within three years, 86.
Insured domiciled out of G.B., payment without grant of representation, 288.
Locality, 104.
Married women, 82-83.
Newspaper schemes, 8.
On life of another, not a reversion, 7, 143.
Provided by deceased, 82-94.
Settled, 83, 86-88.
Value, 293.
S.D. Exemption, 516.
Gift or settlement of, 420-421.

POSSESSION (ADVERSE):
Predecessor, 411.

POST OFFICE:
Money in, *donatio mortis causa*, 33.
Nomination, incidence of E.D., 166, 210.
Payment without grant of representation, 288.

POSTPONEMENT OF PAYMENT (*see also* INSTALMENTS):
E.D. On reversions, 6-7, 139-141, 295.
L.D. On reversions, 355-356, 402-403.
S.D. Where life interests or leases outstanding, 428-431.

POWER:
For professional executor to charge (L.D.), 332-333.
Of raising and recovering E.D., 200-203, 227-232.
In Scotland, 96-99.
Of raising and recovering S.D., 491-494.
Of recovering L.D., 372-375.
Of revocation, 11-12, 40.
To charge money, liable to E.D., 11.

POWER OF APPOINTMENT:
E.D. General, definition, 10.
Duty is a charge, 188.
Executor accountable in case of personal property, 164-166.
Person having, is competent to dispose, 10-11.
Property out of G.B., 110-111.
Incidence of duty, 207, 213, 222-224.
Over-riding, as affecting value, 142.
L.D. Under general, 333-335, 367-368.
Under limited, 333.
S.D. Over-riding, succession destroyed by, 416.
Under general, 421-428.
Under limited, 428.

POWER OF SALE (*see* SALE).

PRACTICE:
E.D. Chapter V., 282-322.
Allowance of S.E.D., and interest under F.A. 1914, 308.
Certificates, 310-316.
Commutations, 309-310.
Confirmations *ad non executa*, 316.
Corrections, 305-306.
Forms, 282-285, 305-309.
Grants *de bonis non*, 316.
Payment of duty, 318-321.
Probate duty, 19.
Remission of, on works of art, etc., 265.
Resealing, 316-318.
Timber, 147.
Valuation, 289-302.
S.E.D. 307-309.

PRACTICE—*continued.*
L.D. Chapter X., 394-406.
Abatement of legacies, 385-386.
Annuities, 395-396.
Contingent legacies, 363-364.
Corrections, 404-405.
Death of life tenant, 402.
Deduction for annuity, 362-363, 400-401.
Forms, 394-402, 404, 406.
Funds in Court, 312-313, 375-378.
Interests in expectancy, 402-404.
Legacies, 394-395.
Payment of duty, 405.
Relationship incorrect, 365.
Residuary account, 396-402.
S.D. Chapter XV., 530-539.
Commutations, 469-471, 538.
Contingent succession, 465-467.
Corrections, 468-469, 538-539.
Forms, 530-538.
Payment of duties by transfer of securities, 318-321.

PREDECESSOR (S.D.):
Also the successor, 411-412. 471-472.
Definition, 409-412.
Entails, 411.
General power of appointment, 424-426.
Joint property, 418-419.
Limited power of appointment, 428.
Settled policy, 420.
Under resettlement, 411-412.

PREMIUMS:
On policy, wholly or partly paid by deceased, 82-86, 420.
On settled policy, none paid by deceased, 86-87, 420.

PRINCIPAL VALUE (*see* VALUATION).

PRINTS (*see* WORKS OF ART, ETC.).

PRIVATE COMPANY (*see* COMPANY).

PROBATE (*see* REPRESENTATION).

PROBATE DUTY:
Explanation, rates, practice, 18-19.
Involving exemption from—
E.D., 247-249.
L.D., at 1 per cent., 391.
S.D. at 1 per cent., 518.

PROPERTY:
E.D. In which deceased never had an interest, 83, 123-125.
Of which deceased competent to dispose, 8-13, 166-167.
Passing, in which deceased had an interest in expectancy, 7, 20, 142.
Passing or deemed to pass, 4, 13-14, 24, 28.
Passing to executor as such, 186-189.
Settled otherwise than by will of deceased, 125-128.
S.D. Of no annual value, 461.

PROPERTY OUT OF G.B.:
E.D. 100-115.
Accountable persons, 166.
Allowance of Colonial or Irish duty, 273-276, 298.
Allowance of Consular Court fees, 274, 299.
British trust, 105, 108, 110-115.
Charge for duty (except on Colonial property), 186, 187, 189.
Deductions, 155-157.
Domicile, 10-11, 110-111, 114.
Extra expense of administering, 156.
Free estate, when liable, 111.
General power over, 10-11.
Gifts *inter vivos*, 114.
Immoveable, 109-110.
Incidence, 204, 207, 209-210, 212.
Ireland, 100-101.
Partnership, 106, 108.
Policies, 114-115.
Probate duty not payable, 249.
Settled property, 112-113.
Value, 298.
What is, 101-108.
L.D. Allowance of Irish duty, 441.
Exemption of personal, where domicile out of G.B., 338-339, 387-388.
How domicile determined, 388-389.
S.D. Allowance of Irish duty, 441.
General power over, 436-437.
Immoveable, 433-434.
Moveable, 433-441.

PROPULSION OF FEE (SCOTLAND):
E.D. 96.

PROVIDENT FUNDS:
Aggregation, 93-94, 124.
Liability to E.D., 92-94.
Small sums, payment without grant, 286-289.

PUBLIC TRUSTEE:
Deduction of fees against residue, 399.

PUR AUTRE VIE ESTATE:
E.D. 21-22.
L.D. 330.

PURCHASE (*see also* PARTIAL CONSIDERATION):
By deceased, of benefit to arise on his death, 85-90.
For full money consideration, exemption:
E.D. 238-240.
In question of gift with reservation, 44-48.
In question of policies, etc., provided by deceased, 90-92.
S.D. 412-413, 516-517.
In joint names, 78-82, 418-419.

PURCHASER:
E.D. Accountable, 175.
Exemption, 238-240.
Interest in expectancy bought before F.A. imposing or increasing duty, 240-243.
No discount on death for quick succession, 277.
Notice, 197.
Protection from charge, 196-200.
L.D. Accountable, 372-373.
S.D. Accountable, 501-504.
Commutation necessary, 469-471, 503-504.
Death of, 480-481, 503.
Interest in expectancy bought before F.A. 1894, 455.
Interest in expectancy bought before F.A. 1910, 448.
Protection from charge, 504-507.

QUICK SUCCESSION ALLOWANCE:
E.D. "Killed in war" cases, 259.
On land or a business, 276-280.

RATES:
E.D. Abatement where margin small, 117-119.
Ad valorem, 116-117.
Agricultural property, 144-145.
Discount on quick succession, 276-280.
Fixed duties, 119-121.
Reversions sold or mortgaged, 241-242.
Scale, 117.
Timber when sold, 145-147.
Works of art, etc., when sold, 264-265.
S.E.D. 20.
Probate Duty, 18.
L.D. Appointments under general powers, 333-335.
Appointments under limited powers, 333.
One per cent., when chargeable, 390-393.
Prior to 30th April, 1909, 340-341.
Scale of, 340.
S.D. Alienated successions, 472-473.
Appointments under general powers, 424-428.
Appointments under limited powers, 428.
"Higher rates," 448-451.
Joint property, 418-419.
One per cent., when chargeable, 518-529.
Prior to 30th April, 1909, 442-448.
Scale of, 442.
Settled policies, 420.
Successor also predecessor, 411-412, 471-472.
Transmitted succession, 473.

REAL ESTATE (*see also* ENTAILED PROPERTY):
E.D. Acceptance in satisfaction of E.D. or S.D., 160, 486.
Accountable persons under F.A., 1894, 169, 173-176.
Under L.P.A., 1925, and L.R.A., 1925, 169-173, 178-180.
Agricultural, in small estates, 143.
Agricultural value, 144-145.

REAL ESTATE—*continued.*
E.D.—*continued.*
Annuity charged on :
Incidence of duty, 216-217.
Release within three years of death, 48-52.
Value on cesser, 23-25.
Appeal as to value, 301.
Capital moneys applicable for duty, 201-202.
Charge for duty, 186-187.
Deceased domiciled outside G.B., 5.
Deductions, 148-155.
Definition, 5.
Excess principal value, 144-145.
Government valuation, 301.
Incidence of duty, 207-208, 211, 214-215.
Instalments, 159.
Legacies payable out of, 212.
Out of G.B., when liable, 105-106, 108, 110.
Particulars required, 299-301.
Protection of purchasers, 196-200.
Quick succession, 276-280.
Registered Land Charge, 190-191, 194, 199-200, 231-232.
Timber, 145-148.
Time for payment, 158.
Undivided shares, 5-6, 167, 170, 205.
Value, 133-134, 143, 299-301.
S.D. Absolute interest, 452-456.
Accountable persons, 487-490.
Under L.P.A., 1925, and L.R.A., 1925, 490-491.
Capital moneys applicable for duty, 492-493.
Cesser of annuity charged on, 428, 535-536.
Charge for duty, 498-500.
Deduction of E.D., 453, 456-458, 460, 464.
Definition, 5-6, 409.
Devise of, preserved from lapse, 475.
Formerly liable to L.D. when directed to be sold, 325-326.
Forms of account, 530-538.
Inclusion in residuary account, 398.
Instalments, 453, 462-463, 535.
Liability of purchasers, 501-507.
Life interest, 458-464.
Mortgages paid off, 410.
No annual value, 461.
Out of G.B. 433-434, 517-518.
Protection of purchasers, 504-507.
Resettlement, tenant in tail regarded as predecessor, 411-412.
Subject to leases, 429-431, 533.
Timber, 456-457, 461-462, 537-538.
Transmission of succession by death, 474-483.
Transmission of succession on sale, 472-473.
Trust for sale, 454, 460, 505.
Undivided shares, 5-6, 534.
REALISATION :
Costs of, not deductible against value for E.D., 133, 289-290.
Extra expenses where property outside G.B., 156.

RECEIPT :
L.D. 368.
Not liable to Stamp Duty, 369.
S.D. 500.

RECOVERY :
By accountable persons from beneficiaries :
E.D. 227-232.
L.D. 372-375.
S.D. 491-494.
By limited owner when E.D. paid by him, 231-232.
In Scotland, 96-99.

RECTOR :
Benefice, not liable to E.D., 238.
Deduction for dilapidations, 303.

REGISTERED LAND :
Capital moneys applicable for duty, 201-202, 492-493.
Notice of charge and discharge, 195.
Persons accountable for E.D., 169-113, 178-180.
Persons accountable for S.D., 490-491.
Protection of purchasers from E.D., 198-199.
Protection of purchasers from S.D., 198-199, 506-507.

RELATIONSHIP :
L.D. 341-343.
Incorrectly stated, 365.
S.D. 443.,

RELEASE :
E.D. Of benefit reserved by donor, 39-40.
Of life interest or annuity, 48-52.
Of power of appointment, 10.
L.D. Of debt, 327.
Of life interest, 346.
S.D. Of life interest, 451, 470, 483-485.
Of mortgage, 410.

REMAINDER (*see* INTERESTS IN EXPECTANCY).

REMARRIAGE :
Allowance for contingency, 310.
Forfeiture of interest within three years of death, 50.

REMISSION (*see also* REPAYMENT) :
All death duties :
After twenty years, 186, 356-357, 469.
Interest, 186, 356-357, 469.
Killed in war, 256-261, 386-387, 517.
Works of art, etc., 263-264.
E.D. Quick succession to land or a business, 276-280.
Small margin, 117-119.
L.D. and S.D., small margin over £1,000, 382, 513-514.

REMOVAL OF OBSTACLE :
Giving rise to a succession, 417-418.

RENT CHARGE (*see also* ANNUITY):
E.D. Accountable persons, 177.
Apportionment of duty, 211, 216-217.
Cesser, 23-26.
Change of security, not a purchase, 239-240.
Deduction for, 153-155.
Free of duty, 223-224.
Release, 48-49, 52.
S.D. Cesser, 428-429, 431-433, 471-472, 535-537.
Succession subject to outstanding, 428-431, 532-533.

REPAIRS:
Deduction in ascertaining "slice," 25.
Deduction in ascertaining value, 299, 459-460, 532-533.

REPAYMENT (*see also* CORRECTIONS *and* REMISSION):
E.D. 160-161.
Practice, 305-306.
S.E.D. 268-272.
Interest on, from 15th August, 1914, 269, 272-273.
Practice, 307-309.
L.D. Contingency, 364.
Death of annuitant before all instalments payable, 358, 361.
Overpaid duty, 365-366, 404-405.
S.D. Commutation cases, 471.
Contingency, 465-467.
Death of successor before all instalments payable, 453, 463-464.
Overpaid duty, 468-469, 538-539.

REPRESENTATION:
Administering without grant, 165, 170, 282.
Court fees in fixed duty cases, 120.
Form for second grant, 316.
Grant of, required, 282.
Exceptions, 285-289.
Inland Revenue affidavit required, 282.
Limited grant, E.D. to be paid in full, 165-166.
Limited grant—whether property passes to executor "as such," 187.
Limited to settled land, 166, 170-171, 284-285, 491.
Resealing, 316-318.
Revocation of grant, L.D., 366.
Time for obtaining grant, 165.

RESEAL:
Of grant of representation, 316-318.

RESERVATION:
E.D. Gifts with, 39-48, 114.
Release of life interest with, 48-52.
Transfers to companies, 52-76.
S.D. Gifts with, 431-433.

RESETTLEMENT (*see also* SETTLED PROPERTY):
E.D. Aggregation, 131.
S.D. Alienation or new succession, 472-483.
First succession arising, 446-447.
Predecessorship, 411-412, 471-472.

RESIDENCE :
Affecting exemption of war securities, 237.
Cesser of right of, 30.

RESIDUE :
Ascertainment of income, 361-362.
At death of life tenant, 350-351, 402.
Cannot be given free of L.D., 353-354.
Charity, 347.
Deductions, 348-349, 398-401.
E.D., how borne, 203-207, 398.
Form of account, 396-397.
Government securities utilised in paying duty, 318-321, 347, 405.
Includes accretions, 344-345, 348-349.
Includes investments made since the death, 397.
Includes lapsed legacies, 328.
Income tax, 347.
Interest in expectancy may be included, 355-356, 402-403.
Liability to L.D., 325.
Mixed fund, 212, 249, 398.
Retainer, 345-346.
Rights of residuary legatee in, 105-106, 347.
Settled on persons liable to different rates, 361-362, 401-402.
Settled on persons liable to same rate, 359-361.
Value of unrealised assets, 347, 397.

RESTRICTIONS (on transfer of shares) :
Value for E.D., 138-139.

RETAINER :
L.D., payable on, 343-346.

RETURN OF DUTY (*see* REPAYMENT).

REVERSION (*see* INTEREST IN EXPECTANCY).

REVERTER TO SETTLOR :
Exemption from E.D., 29, 250-252 (Nos. 13 and 14).
Exemption from S.D., 471-472.

REVOCATION :
Of grant of Probate, effect on L.D., 366.
Power of, attracts E.D., 11, 40.

ROYAL CHARTER (*see* CROWN ENTAILS).

ROYAL FAMILY :
Exemption from L.D., 377.
Exemption from S.D., 512.

SAILOR :
Domicile of, 389.
Exemptions and remissions, 256-262, 386-387, 517.
Payments without grant of representation, 287-288.

SALE :
E.D. Charge for duty shifting to proceeds, 189-190, 196-200.
Commutation for purpose of, 161-163.
Exemption, 238-240.
Expenses not deductible, 133, 289-290.
Interest in expectancy, before F.A. imposing or increasing duty, 240-243.
Liability of purchaser, 175.
Protection of purchaser, 196-200.
Powers of raising or recovering duty by, 200-203, 227-232.
In Scotland, 97-98.
Real estate, all instalments payable, 157-159.
Timber, 145-148.
Value evidenced by, 133, 142, 289-290, 292.
Works of art, etc., 264-265.
S.D. Advowson, 516.
Charge for duty shifting to proceeds, 498-499, 504-507.
Commutation, 469-471.
Deduction of expenses of, 535.
Effect, 415-417.
Exemption, 412-413, 431, 516-517.
Liability of purchaser, 501-504.
Protection of purchaser, 504-507.
Timber, 456-457, 537.

SAVINGS BANK (*see* POST OFFICE).

SCALES OF DUTY (*see* RATES).

SCHOOL TEACHERS :
Gratuities liable to duty, 262-263.

SCIENTIFIC COLLECTIONS (*see* WORKS OF ART, ETC.).

SCOTLAND :
Cesser of curtesy and terce, 244, 411, 445.
Entailed estate, 94-99.
Forms :
E.D. 285, 305-309, 314, 322.
Inventory duty, 19.
L.D. 394-402, 404, 406.
S.D. 530-539.
Locality of assets, rules, 101-108.
Married women, 11.
Payment for consent to disentail, 96.
Payment of duty in, 318.
Powers of raising and adjusting E.D., 96-99.
Resealing, 316-318.
Settled property, definition, 13.

SECRET TRUST :
L.D. 335-336.
S.D. 411, 432.

SETTLED LAND (*see also* RESETTLEMENT *and* SETTLED PROPERTY) :
Special grant of representation, 166, 170-172, 491.

SETTLED PROPERTY :

E.D. Accountable persons, 170-176, 178-180.
Adjustment of duty between beneficiaries, 227-232.
Aggregation, 127-128, 130-131.
Capital moneys applicable for duty, 201-203, 230.
Change of security, 90-91, 239-240.
Charge for duty, 188-189.
Shifting on sale, 190, 198-200.
Commutations, 161-163, 309-310.
Deduction for annuities, 154-155.
Deduction for mortgages, 152-153.
Definition, 13.
Determinable life interest, 14-15.
Directions as to incidence of duty, 220-227.
Discretionary trusts, 16-17.
Dower and curtesy estates, 244.
Enlargement of interest, 15, 31, 235.
Entailed property (*q.v.*).
Executor may pay E.D. on request, 169, 201.
Exemption where E.D. once paid, 243-247.
Exemption where Probate Duty paid, 247-249.
Exemption where settlement by surviving spouse, 250.
Failure of interest, 252-255.
Foreign settlement, 236.
Incidence of duty, 207-217, 219-220.
Interests in expectancy (*q.v.*).
Liability to duty, 12-23.
Life tenant entitled subject to intervening life interest, 7, 20, 142.
Otherwise than by will of deceased, 125-127.
Out of G.B., 112-113.
Policies, 83, 86-88.
Power of revocation, 11-12, 40.
Powers of raising E.D. on, 200-203.
Pur autre vie interests, 21-22.
Quick successions, 276-280.
Release of life interest, 48-52.
Reverter to settlor, 250-252.
Right of residence or user of chattels, 28-29, 30-31.
Scotland, definition in, 13.
Entailed estate is not, 94.
State entails, 22-23, 124-125, 219-220.
Subsidiary devolutions, 17-21.
Taken out of settlement, 48-52.
Transfer to company, 69-76.
Works of art, etc., 264-266.

S.E.D. Allowance of, 268-273, 308.
Explanation of, 268.
Scotland, 95-96.
When still payable, 20, 307.

L.D. Accountable persons, 371.
Beneficiaries all liable to same rate, 359-361.
Beneficiaries liable to different rates, 359, 361-363.
Death of life tenant, 350-351, 402.
Furniture, etc., 370, 382-383.
Liability to 1 per cent. rate determined on testator's death, 392-393.

SETTLED PROPERTY—*continued.*
S.D. Acceleration, 483-485.
Accountable persons, 487-491.
Capital moneys applicable for duty, 492-493.
Commutation, 163, 469-471, 503-504, 530.
Costs of accounts, 488-489.
Deduction for mortgages, 467-468.
Effect of sale, 415-417.
Enlargement of interest, 485-486.
First succession, 443-448.
Foreign element, 432-441.
Furniture, 514-515.
Liability to 1 per cent. rate determined on first succession, 520-525.
Policy of assurance, 420.
Predecessor as to mortgages paid off, 410.
Predecessor in case of resettlement, 411-412, 471-472.
Succession alienated or transmitted on death, 472-483.
Taken out of settlement, 451, 469-470, 483-484.
When duty taken on *corpus*, 457-458.

SETTLEMENT ESTATE DUTY :
Allowance against E.D., 269-272.
Repayment of excess, 269.
Explanation, 268-269.
Forms and practice, 307-309.
Rates, 20.
Repayment of interest, 269, 272-273.
Scotland, 95-96.
Still payable where death before F. A., 1914, 20.

SETTLOR :
E.D. Discretionary trust in favour of, 41-42.
Enlargement of interest of, 255-256.
Power of revocation, 11, 40.
Reservations by, attracting liability, 39-44.
Reverter to, 250-252.
S.D. Is the predecessor, 409-412.
Reverter to, 471-472.

SHARES (*see also* UNDIVIDED SHARES) :
Deduction of calls or discount, 292.
Locality of, 101-103, 107-108.
Value for E.D., 133-135, 138-139, 290-292.
Under F.A., 1930, 135-138.
Value for L.D., 344-346, 397.

SHIPS :
Locality of, 107.
Particulars required, 295.

SITUATION OF ASSETS :
Effect on liability to E.D., 109-115.
Effect on liability to L.D., 338-339.
Effect on liability to S.D., 433-434.
Rules for determining, 101-108.

SLICE :
Deduction, 31, 153-155, 534.
Value of interest ceasing, 24-25.

SMALL ANNUITIES :
E.D. Exemption, 263.

SMALL ESTATES :
E.D. Not exceeding £100, 116, 234-235.
Not exceeding £300 or £500 gross, 119-121.
Not exceeding £1,000 net, 121-122, 125-128.
Agricultural property (limitation of value), 143-144.
Inclusion of joint property, interests in expectancy, etc., 121, 127.
Not exempt from second E.D., 122.
Payment without grant of representation, 285-289.
Slight excess over £1,000, 117-119.
S.E.D. Exemption, 122.
L.D. and S.D. Not exceeding £1,000, 382, 513.
Slightly exceeding £1,000, 383, 513-514.
L.D. Personal estate under £100, 381.
S.D. Successions under £100, 512-513.

SMALL MARGIN (*see* ABATEMENT).

SOLDIERS :
Domicile, 389.
Exemptions and remissions, 256-262, 386-387, 517.
Payments without grant of representation, 286.

SOLICITOR :
In administration action, 377.
L.D. on fees, 332-333.
Misappropriation of duty, 177, 372, 375, 490.
Not accountable for E.D. or S.D., 176-177, 488.
Notice to, 197.

SPECIALTY DEBTS :
Locality of, 103-105, 107, 110.

SPECIFIC BEQUEST :
Bears own burden of mortgage, 349.
Carries accretions, 344-345.
Settled, 370, 382-383.
Under £20, exemption from L.D., 380-381.
Value for L.D., 344-345.

STAMP DUTY :
Receipts for L.D. not liable to, 369.

STATE ENTAILS :
Aggregation, 124.
Incidence of E.D., 119-120.
Value for E.D., 22-23.

STATUTE-BARRED DEBTS :
Direction to pay, 328.

STATUTORY LIFE INTERESTS UNDER A.E.A., 1925 :
No E.D. on cesser, 244.
S.D. on cesser, 411, 445-446.

STOCK-IN-TRADE :
Quick succession allowance, 278-279.
Value for E.D., 293-294.

STOCKS (*see* SHARES).

STRANGER IN BLOOD :
L.D. 340-343.
S.D. 442-443.

STRICT SETTLEMENT (*see* RESETTLEMENT *and* SETTLED PROPERTY).

SUBSIDIARY DEVOLUTIONS :
E.D. 17-20.
L.D. 336-337.
S.D. 472-476.

SUCCESSION :
Acceleration of, 483-485.
Alienated, 472-473, 476-483.
Arises, when, 444.
Compromised, 451.
Contingency, subject to, 465-467.
Defeated, 416.
Deferred, 414, 417-418, 428-431.
Definition, 409.
Displaced, 474-475.
First, 443-448.
Foreign element, 433-441.
Joint, 418-420.
Mortgaged, 467-468.
Before F.A. 1894, 455.
Before F.A. 1910, 448.
Must be referred to a death, 413-415.
New, 474-483.
Notice of, to be given, 494.
Of children preserved from lapse, 475, 522.
Once a succession, always a succession, 415-417.
Quick (*see* QUICK SUCCESSION ALLOWANCE).
Sold before F. A. 1894, 455.
Sold before F.A. 1910, 448.
Subject to outstanding charge or lease, 428-431, 503-504, 531, 533.
Transmission on death or alienation, 472-483.

SUCCESSION DUTY :
Abatement where estate slightly exceeds £1,000, 404, 513-514.
Acceleration, 483-485.
Acceptance by Commissioners of property in payment of, 486.
Accountable persons, Chapter XIII., 487-507.
Accruer under Wills Act, 1837, 475, 522.
Agricultural property, 455-456.
Alienation of succession, 472-473, 476-483.
Allowance of 1 or 1½ per cent. against E.D., 267-268.
Appeal, 495.
Assessment, 494-495, 498 (*see also* FORMS, PERSONAL PROPERTY, *and* REAL PROPERTY).

Succession Duty—*continued.*
Certificate of discharge, 500-501.
Cesser of outstanding interests, 428-433, 532-533, 535-537.
Charge for duty, 498-500, 507.
Shifting to proceeds of sale, 498-499, 504-507.
Commutations, 163, 469-471, 503-504, 538.
Composition, 469.
Compromise, 451.
Contingency, 465-466.
Corrections, 465-468, 538-539.
Covenant debts, 421.
Deductions:
E.D., 453, 456-458, 460, 464.
Incumbrances, 467-468.
In timber accounts, 147, 456.
Definition of real and personal property, 5-6, 409.
Discount, 453, 463-464, 530, 533-534, 536.
Displaced succession, 474-475.
Domicile, effect of foreign, 433-441.
Enforcement of liability, 494-496.
Enlargement of interest, 485-486.
Evasion, 411.
Exemptions, Chapter XIV., 511-529.
Facilities for raising, 491-494.
Foreign element, 433-441.
Forms, 530-539.
"Free of Duty," 508-510.
Higher rates, 448-451.
Incidence of duty, 507-510.
Between vendor and purchaser, 502-504.
Instalments, 453, 458, 462-465, 535.
Interest, 453, 458, 463, 530, 531, 535, 539.
Limitation of liability, 496-497.
Purchasers and mortgagees, 504-507.
Marriage, effect of, 341-342, 443.
Mortgages paid off or released, 410.
Payment by transfer of securities, 318-321, 539.
Personal property, absolute interest, 457-458.
Life interest, 458-459, 464-465.
Practice, Chapter XV., 530-539.
Predecessor, 409-412.
Property of no annual value, 461.
Property on which payable, Chapter XI., 409-441.
Advances, 483-484, 489.
Advowsons, 516.
Appointments under powers, 421-428.
Chattels in specie, 514-516.
Cesser of outstanding interests and leases, 428-431.
Covenant debts, 421.
Entailed property, 411.
Gifts with reservation, 431-433.
Joint property, 418-420.
Leaseholds, 409.
Policies of assurance, 420.
Property out of G.B., 433-441.
Timber, 456-457, 461-462, 537-538.

SUCCESSION DUTY—*continued.*
Rates and amount, Chapter XII., 442-486.
Higher rates, 448-451.
One per cent. rate, exemptions, 518-529.
Relationship for purpose of rate, 341-343, 443.
Real property, competent to dispose, 433, 452-456.
Not competent to dispose, 459-464.
Remission, 469.
Repayment, 453, 463-469, 471, 538-539.
Sale or mortgage before F.A. 1894, 455.
Sale or mortgage before F.A. 1910, 448.
Secret trust, 411, 432.
Separate assessments, 498.
Small margin over £1,000 cases, 404, 513-514.
Time for payment, 451-452.
Transmission of succession on death or alienation, 472-483.
Value, 452-468, 530-538.

SUCCESSOR: (S.D.)
Absolute interest cut down to life interest, 453, 475.
Accountable, 487-490.
Charges created by, 467-468.
Competent to dispose, 452-458.
Not competent to dispose, 458-465.
Corporation, 449, 455, 537.
Death of expectant, 472-483.
Definition, 409.
Giving up property, allowance for, 468.
Improvements by, 468, 532.
Individual benefit, 525-529.
Limitation of liability, 496-497.
Purchaser of succession is, 501-504.
Sale by, 472-483.
Under own disposition, 471-472.

SUI JURIS:
Person not, 8-9, 244, 248.

SUPERANNUATION BENEFITS:
Exemption, 262-263, 390.

SURETY DEBT:
When allowable (E.D.), 148, 150-151.

SURRENDER:
E.D. Of benefit reserved by donor, 39-40.
Of lease by executors, 304.
Of life interest or annuity, 48-52.
L.D. Of lease by executors, 399.
Of life interest, 346.
S.D. Of life interest, 451, 470, 483-485.
Of mortgage on settled property, 410.
Of Government stocks in payment of duties, 318-321, 347, 405, 539.

SUR TAX:
No deduction for wife's, 151

SURVIVORSHIP (*see* JOINT PROPERTY) :

TEACHERS :
Gratuities liable to duty, 262-263.

TEMPORARY ESTATE DUTY :
Allowance against E.D., 267-268.
Still payable where death before F.A., 1894, 19.

TENANCY IN COMMON (*see* UNDIVIDED SHARES).

TENANCY IN TAIL (*see* ENTAILED PROPERTY).

TENANT FOR LIFE (*see* LIFE TENANT *and* SETTLED PROPERTY).

TENANT RIGHT :
Liable to E.D. and L.D., 293-294, 400.

TERCE :
E.D. Cesser exempt, 244.
Widow liable for proportion of duty, 211.
S.D. Cesser, 411, 445.

TERMINABLE CHARGE :
E.D. Deduction for, 153-155.
Incidence of duty, 216-217.
Power to raise duty by, 98, 201, 232.
S.D. 428-433, 471-472, 535-537.

TESTAMENTARY EXPENSE :
Deduction against residue, 348, 399.
E.D., when a, 203, 207, 220-221.
Fees of Public Trustee, 399.

TIMBER :
E.D. 145-148, 210-211.
S.D. 456-457, 461-462, 537-538.

TIME FOR PAYMENT (*see also* INSTALMENTS) :
E.D. 157-159, 167.
L.D. 343-346.
S.D. 451-452.

TIME TO TIME :
Benefit only ascertainable from, 364-365, 465.

TITHE :
When deductible, 299, 460.

TOMBSTONE :
When cost deductible, 348, 399.

TOTAL ASSETS OF A COMPANY :
Basis of valuing shares, 66-67, 69, 135-138.
Proportion of value liable to E.D., 62-63.
Valuation of, 63-66.

TOTAL INCOME OF A COMPANY :
Basis of proportional sum liable to E. D., 59-63.

TRANSFER OF GOVERNMENT SECURITIES :
In payment of duties, 318-321, 347, 405, 539.
Small amounts without grant of representation, 287.

TRANSFERS TO COMPANIES:
E.D. Heading "H," 52-77.
Enforcement of liability, 76-77.
Where deceased was life tenant, 69-76.
Where deceased was owner, 54-69.

TRANSMITTED SUCCESSION:
S.D. 473-476.

TRUST CORPORATION:
Deduction of fees against residue, 399.

TRUST, DISCRETIONARY:
Income subject to, effect on E.D., 16-17, 41-42.
Mode of accounting for L.D. and S.D., 364-365, 465.

TRUSTEE:
E.D. Accountable, 173-176, 178-180.
Cesser of annuity for acting as, 238.
Death of, special grant of representation, 284.
Exemption where deceased merely, 35, 238.
Limitation of liability, 173, 176, 180, 184-186.
Settlor trustee dying more than three years after settlement, 35, 238.
L.D. Accountable, 371.
S.D. Accountable, 487-491.
Annuity for acting as, 415.
Limitation of liability, 496-497.

TUTOR:
Accountable for S.D., 487.

TWO THOUSAND POUNDS:
Individual benefit for one per cent. L.D. and S.D., 525-529.

UNDERWOOD:
No E.D. or S.D. on, 148, 457.

UNDIVIDED SHARE:
Executor accountable, 167, 170.
Incidence of E.D., 205
Is real property for E.D. and S.D., 5-6, 534.
Value, 300, 534.

UNFELLED TIMBER (*see* TIMBER).

UNITED KINGDOM:
Division for death duty purposes, 100-101.

UNITED STATES OF AMERICA:
Certificate of payment of E.D. for use in, 314.
Securities issued in, free of taxation, 237.

UNIVERSITY:
Chattels given to, exempted, 263-264, 383-384, 515.
Chattels sold to, when exempt, 266, 384, 516.

USER OF CHATTELS:
E.D. on cesser, 30.
L.D. and S.D., exemptions, 382-383, 514-515.

VALUATION:
E.D. Actuarial, 296.
Agricultural property, 143-145.
Annuity arising, 89.
Annuity ceasing, 24-25.
Appeal, 184, 301.
Assets of company, 63-65.
Benefits from company, 59-60.
Commutation, 161.
Costs of, 133-134.
Country cottages, 143.
Crown entails, 22-23.
Deductions, 148-157.
Foreign property, 298.
Furniture, 293.
General principles, 133-134.
Gifts *inter vivos*, 34-35.
Goodwill, 294.
Income of company, 60-61.
Interest ceasing on death, 24-25.
Interests in expectancy, 295-297, 309-310.
Land or a business for discount on quick succession, 276-280.
Large holdings, 134.
Mortgage debts, 292.
Official, 133-134, 301.
Partnership assets, 294.
Policies, 292-293.
Professional, not essential, 293.
Property passing, exceeding £15,000, 520-525.
Real estate and leaseholds, 133, 143-145, 299-302.
Sale shortly after death, 133, 289-290.
Ships, 295.
Stock-in-trade, 293.
Stocks and shares, 134-138, 290-292.
Timber, 146-147.
Undivided share, 300.
Works of art, etc., 265, 293.
L.D. Annual value how ascertained, 361-362.
Annuities, 357-359, 361-363, 395-396, 400-401.
Contingencies, 363-364.
Government securities utilised in paying duty, 347.
Interest in expectancy, 355-356, 402-403.
On death of life tenant, 350-351, 402.
Specific legacies, 344-345, 395.
Uncertain, 364-365.
Unrealised assets in residuary account, 347, 397.
S.D. Acceleration, 484.
Contingencies, 465-467.
Enlargement of interest, 485-486.
Land yielding no income, 461.
Life interest in personal property, 464-465, 531.
Life interest in real property, 459-464, 531-533.
Manors, 462.
Mines, 462.
Property subject to outstanding interests and leases, 428-431, 433, 532-533, 535-537.

VALUATION—*continued.*
S.D.—*continued.*
Real property, 452-456, 534-535.
Timber, 456-457, 537.
Uncertain, 364-365, 465.
Undivided share, 534.

VALUERS:
Reference to Valuation Branch, 301.

VENDOR AND PURCHASER (*see also* PURCHASER *and* SALE):
Incidence of L.D. between, 373.
Incidence of S.D. between, 502-504.

VICTORY BONDS (*see* GOVERNMENT SECURITIES).

VITIOUS INTROMITTER:
Accountable for E.D., 165.

VOLUNTARY CHARGE:
Not deductible for E.D., 148-149.
But deductible for L.D., 399.

WAR, KILLED IN (*see* KILLED IN WAR).

WAR STOCK (*see* GOVERNMENT SECURITIES).

WIDOW (*see* HUSBAND AND WIFE).

WILL:
Compromise under, 337-338, 451.
Secret trust, 335-336, 432.

WILLS ACT, 1837, S. 33:
E.D. 12.
L.D. 329.
S.D. 475, 522.

WOODLANDS (*see* TIMBER).

WORKMEN'S COMPENSATION ACT:
Compensation on death not liable to E.D., 102.
Money in Court, grant of representation not required, 287.

WORKS OF ART, ETC.:
E.D. Accountable persons, 177.
Aggregation, 128-129, 264-265.
Definition, 265.
Exemption until sold, 264-266.
Exemption when given to public bodies, 263-264.
Exemption when sold to public bodies, 266.
Incidence of duty, 205.
Valuation, 265, 293.
L.D. Accountable persons, 370-371.
Exemptions, 382-384.
S.D. Accountable persons, 515.
Exemptions, 514-516.

Recat. A
1-84

PROBATE AND ADMINISTRATION FORMS

(NON-CONTENTIOUS)

FOR USE IN THE

PRINCIPAL OR DISTRICT REGISTRIES.

PRINTED AND PUBLISHED BY

The Solicitors' Law Stationery Society, Limited.

LONDON:

22 CHANCERY LANE, W.C.2.

TELEPHONES: HOLBORN 0162 & 0172.

27 & 28 WALBROOK, E.C.4.
TELEPHONE: MANSION HOUSE 5074.

49 BEDFORD ROW, W.C.1.
TELEPHONE: CHANCERY 8160.

6 VICTORIA STREET, S.W.1.
TELEPHONE: VICTORIA 2011.

15 HANOVER STREET, W.1.
TELEPHONE: MAYFAIR 7020.

Also at 19 & 21 NORTH JOHN STREET, LIVERPOOL, and
66 ST. VINCENT STREET, GLASGOW, C.2.

AGENCY DEPARTMENT:

London: 22, CHANCERY LANE, W.C.2.

TELEGRAMS:—OYEZ, FLEET-LONDON. TELEPHONE: HOLBORN 5766.

N.B.—All the Forms are kept absolutely up to date.

			s.	d.
	Official Probate Paper, front sheets or followers ..	*per doz.*	2	0
	Back sheets for ditto (Probate)	,,	3	0
	,, ... (Administration)	,,	3	0
	Parchments (Official Size) front sheets	*each*	3	6
	,, ,, followers	,,	3	6
	.. .. back sheets	,,	3	6
1.	Tabulated Record of a Testator's Securities from date of death to Residuary Account *each* 3*d.*	*per quire*	5	0
2.	Application for a Certificate of Discharge under Section 11 (1) of the Finance Act 1894 (with instructions). No. 25	*per doz.*	1	6
2a.	Instructions for Execution of Wills *per quire* 1*s.*	*per* 100	3	6
	Or with Solicitor's Name and Address filled in ..	*per* 500	15	0
2b.	Instructions to Executors for Filing with Wills. Settled by Mr. T. Cyprian Williams, Barrister-at-Law .. .. *each* 6*d.*	*per doz.*	5	0
	Printed Envelopes for Wills	,,	2	0
2c.	Particulars required for obtaining Grant of Probate or Administration. Settled by Sir B. L. Cherry, Barrister-at-Law .. *each* 6*d.*	,,	5	0
4.	Oath for Executors. (P.R. and D.R.)	*per quire*	2	6
4a.	Oath for Executors where it is required to re-seal Grant in Scotland	,,	2	6
5.	Oath of Attorney of Executor (Administration Will annexed)	,,	5	0

			s.	d.
5a.	Oath for Special Executors (Settled Land) for use when the deceased died Testate but no general grant has been made in respect of the Estate of the deceased	*per quire*	2	6
5b.	Oath for Special Executors (Settled Land) for use when the deceased died Testate and a grant has already been made in respect of the Estate of the deceased	,,	2	6
5c.	Affidavit to lead Amendment of Grant (Probate or Administration with Will) to exclude settled land	,,	2	6
6.	Power of Attorney by Executor (exempt from Duty)	,,	5	0
8.	Oath for Administrators. (P.R. and D.R.)	,,	2	6
8a.	Nomination of Co-administrator by Elected Guardian (Administration)	,,	2	6
8b.	Nomination of Co-administrator by Guardian (Administration with the Will)	,,	2	6
8c.	Nomination of Co-administrator by Statutory Guardian (Administration)	,,	2	6
9.	Oath for Attorney of Administrator	,,	2	6
10.	Power of Attorney to take Administration	,,	5	0
11.	Oath for Administrators, with the Will. (P.R. and D.R.)	,,	2	6
11a.	Oath for Administrators (Settled Land) for use when the deceased died Intestate but no grant has been made in respect of the Estate	,,	2	6
11b.	Oath for Administrators (Settled Land) for use when the deceased died Intestate and a grant has already been made in respect of the Estate	,,	2	6
11c.	Affidavit to lead Amendment of Grant (Administration) to exclude Settled Land	,,	2	6
11d.	Oath for Administrators (Will) (Settled Land). For use when the deceased died Testate, but no general grant has been made in respect of the estate (Administration with Will)	,,	2	6
11e.	Oath for Administrators (Will) (Settled Land). For use when the deceased died Testate, and a grant has already been made in respect of the estate (Administration with Will)	,,	2	6
12.	Oath for Administrators, de bonis non	,,	5	0
13.	,, ,, with the Will, de bonis non	,,	5	0
14.	Oath for Double Probate	,,	2	6
15.	Oath of Administrator acting as Guardian of Minor	,,	5	0
18.	Administration Bond. (P.R. and D.R.)	,,	2	6
18a.	Bond of a Creditor	,,	2	6
19.	Administration Bond, with the Will. (P.R. and D.R.)	,,	2	6
19b.	Bond of a Creditor, with the Will	,,	2	6
20.	Affidavit of Handwriting (P.R. and D.R.)	,,	2	6
21.	Affidavit of Attesting Witness in Proof of due Execution	,,	2	6
22.	Affidavit of Attesting Witness in Proof of due Execution, and Reading over	,,	2	6
23.	Affidavit as to Interlineations and Alterations	,,	2	6

			s.	d.
24.	Affidavit of Plight and Condition and Finding ..	*per quire*	5	0
25.	Affidavit of search for Will	,,	2	6
26.	Affidavit as to British status of a Testator ..	,,	2	6
27.	Affidavit of Justification of Sureties	,,	2	6
28.	Election by Minor of a Guardian	,,	2	6
29.	Declaration of the Estate of a Testator or an Intestate	,,	5	0
30.	Renunciation of Administration, with the Will. (P.R. and D.R.)	,,	2	6
31.	Renunciation of Administration	,,	2	6
31a.	Renunciation of Probate or Administration (Will). (P.R. and D.R.)	,,	2	6
32.	Warning to Caveat (Copy)	,,	2	6
32a.	Affidavit of Service of Warning and of Search and Non-Appearance	,,	2	6
33.	Certificate of Reason of Delay	,,	2	6
34.	Oath to lead to Certificate of further Security ..	,,	2	6
34a.	Oath to lead to Notation of Domicile *each* 4*d.*	,,	5	0
35.	Memorial for a Duty-paid Certificate or Stamp .. .. *each* 4*d.*	,,	5	0
36.	Advertisement to Creditors (Deceased Persons) (Con. 45)	,,	2	6
37.	Statement of Expenses in obtaining Probate ..	,,	5	0
38.	Notice (No. 1) by District Registrar of Application for Probate	,,	2	6
38.	Notice (No. 1a) by District Registrar of Application for Letters of Administration with the Will annexed	,,	2	6
38.	Notice (No. 1b) by District Registrar of Application for Administration	,,	2	6
39.	Citation to see Proceedings (draft) (4)	*each*	0	6
40.	Citation to Accept or Refuse Administration (draft)	,,	0	6
41.	Citation to Accept or Refuse Administration with the Will or Probate (draft)	,,	0	6
42.	Præcipe for Citation (2)	*per quire*	2	6
43.	Affidavit of Service of Citation (13)	,,	2	6
44.	Notice of intention to apply for Appointment of Special or Additional Representative	,,	2	6
45.	Request by Executors or Administrators to be Registered as Members of a Company (Form approved by Chartered Institute of Secretaries) (Con. 41a)	,,	2	0

COLONIAL PROBATES ACT 1892.

1.	Oath to re-seal Grant	*per quire*	2	6
2.	Oath of Attorney to re-seal Grant	,,	2	6
3.	Advertisement of Re-sealing (for "The Times")	,,	2	6
4.	Administration Bond	,,	2	6
5.	,, ,, on application by Attorney	,,	2	6
6.	Power of Attorney	*each*	0	6

CONTINUATION FORMS

For annexing to Inland Revenue Affidavits.

These Forms are necessary in obtaining Probates for annexing to the Inland Revenue Affidavits, as the Accounts and Schedules given in them are too short for practical use.

Price 2/- per dozen.

1. Particulars of Stocks and Shares for Residuary Account.

1a. Particulars of Stocks and Shares.

2. Account of the Debts due and owing from the deceased.

3. Account of Personal or Movable Property, situate out of Great Britain, which is not saleable or transferable in Great Britain.

4. Account of Debts due and owing from the deceased to persons resident out of Great Britain, other than debts contracted to be paid in Great Britain, or charged on property situate within Great Britain, which have been deducted.

5. Account of the Personal Property, whether in possession or reversion, other than that which the deceased at the time of his death was competent to dispose of [*see* Sec. 22 (2) (*a*)], but which he did not dispose of.

6. Account of Moneys which the deceased had at the time of his death a general power to charge on Real Property, whether the power was exercised by his Will or not.

7. Schedule of Real and/or Leasehold Property.

7a. Particulars of Land of Copyhold Tenure or Customary Freehold, etc.

9. Account of the Debts and Incumbrances on the Real and Leasehold Property.

10. Particulars of the Dividends on Stocks and Shares.

11. Particulars of Money out on Mortgage, Bonds, Bills, Notes, etc.

12. Particulars of Policies of Assurance on the life of the deceased.

13. Particulars of the Rents of the Real and Leasehold Property.

14. Particulars of Money out on Mortgage, Bonds, Bills, Notes, etc., for Residuary Account.

15. Particulars of "other" Property passing on the death of the deceased in respect of which Estate Duty is paid on separate accounts.

16. Particulars of Real Property which passed on the death of deceased under a disposition other than the Will of the deceased.

The Society's Agency Department undertakes all work usually entrusted to Law Stationers in connection with the lodging of papers for Probate and Administration and the payment of Estate and Probate Duties.

LIST OF WORKS.

CONVEYANCING.

PRIDEAUX'S CONVEYANCING FORMS AND PRECEDENTS

(Incorporating Wolstenholme's Forms and Precedents). Adapted for use under Lord Birkenhead's Acts, with Dissertations and Notes, by Sir BENJAMIN L. CHERRY, LL.B., of Lincoln's Inn, one of the Conveyancing Counsel to the Court, and J. R. PERCEVAL MAXWELL, of Lincoln's Inn, Barrister-at-Law. The passing of the Law of Property Acts, in the drafting of which Sir Benjamin Cherry took such an active part, has necessitated this work being largely re-written and considerably enlarged. **Twenty-second Edition.** In three volumes. *Price* £6 6*s. net, or by post* £6 7*s.* 9*d.*

EMMET'S NOTES ON PERUSING TITLES.

By LEWIS E. EMMET, Solicitor. This new edition has been practically re-written. Since the last edition was published, Mr. Emmet has had the advantage of studying the many new decisions on the construction of the new Acts, and the comments and opinions contained in the various Legal Journals and Publications, and these have very greatly assisted him to show more clearly the effect of the new Acts, and to venture an opinion on points which may still be considered doubtful. At the same time Mr. Emmet deals in special detail with the points in which a solicitor in his daily practice is most likely to be interested. All the cases of practical importance up to 1st November, 1929, have been referred to and commented on. **Twelfth Edition.** Volume I now ready, contains 780 pages of subject matter, with Complete Index, Table of Cases and Table of Statutes, *Price* 30*s.* net, *or by post* 30*s.* 9*d.* Volume II to be published later at the same price.

THE LAW OF PROPERTY ACTS 1922 to 1925.

Being copies of the 1925 Acts and the unrepealed portions of the 1922 and 1924 and certain older Acts, with a complete INDEX and TABLES shewing where the corresponding sections of the repealed Acts are to be found in the New Acts, and *vice versa*, including SUPPLEMENT embodying the Law of Property (Amendment) Act 1926, with cross references to the Main Index. By HUGH POLLOCK, M.A. (Cantab.), of Lincoln's Inn, Barrister-at-Law, late one of the Registrars at the Land Registry. *Price, including Supplement,* 25*s. net, or by post* 25*s.* 9*d. Supplement only* 1*s. net, or by post* 1*s.* 2*d.*

Should undoubtedly find a place in every conveyancer's office.—Solicitors' Clerks' Gazette.

A really excellent and useful piece of work.—Cambridge Law Journal.

CONVEYANCING—*continued.*

EVERYDAY POINTS IN PRACTICE UNDER THE LAW OF PROPERTY ACTS, with Index and Tables.

Arranged, revised and edited by ALFRED FELLOWS, B.A. (Cantab), of Lincoln's Inn, Barrister-at-Law. Contains 1,025 Questions and Answers, from October, 1925, to the end of 1927, reprinted from *The Solicitors' Journal*, constituting one of the most useful reference books on the new Acts. *Price* **21***s. net, or by post* **21***s.* **9***d.*

PATENTS CONVEYANCING.

By JULIAN Q. HENRIQUES, of the Inner Temple, Barrister-at-Law. Reprinted from "Prideaux's Conveyancing." **Twenty-second Edition**, with an additional note on British Patent Rights in the Irish Free State, and the Industrial and Commercial Property (Protection) Act 1927 of the Irish Free State. *Price* **7***s.* **6***d. net, or by post* **8***s.*

MANUAL OF TRUST LAW.

By A. H. COSWAY, author of "The Conveyancer's Notebook," "The Devolution of Settled Land (with concise Precedents)," "A Practical Guide to the Land Charges Act, 1925," "A Handbook on Wills." Deals with the powers of management, delegation, advancement, appropriation and sale, conferred on Trustees, Tenants for Life and Personal Representatives. *Price* **7***s.* **6***d. net, or by post* **7***s.* **10***d.*

A GUIDE TO LAND REGISTRY PRACTICE.

By J. J. WONTNER. An authoritative book, approved by H.M. Chief Land Registrar, for both town and country solicitors, which will help them to deal expeditiously with Land Registration matters. A Supplement is included dealing with the Land Registration Fee Order, and Rules, 1930. *Price* **6***s. net, or by post* **6***s.* **4***d.*

APPORTIONMENTS ON COMPLETION OF SALES OF LAND with Particulars of the Common Outgoings of Land.

And some specimen Completion Accounts. By R. M. P. WILLOUGHBY, LL.D. (Lond.), Solicitor. *Price* **7***s.* **6***d. net, or by post* **7***s.* **10***d.*

The amount of information packed away in this small space is really very remarkable.—Solicitors' Journal.

Well planned and well executed.—Law Notes.

AN AID TO APPORTIONMENT.

A table for ascertaining the proportion of an annual sum for any lesser periods. By FRED. T. NIELD, Solicitor's Managing Clerk. *Price* **1***s., or by post* **1***s.* **2***d.*

MIXED CHARITIES.

By A. H. WITHERS, of Lincoln's Inn, Barrister-at-Law. A clear exposition of the existing law on this difficult subject, referred to in the new edition of Prideaux's "Precedents in Conveyancing." *Price* 2*s. net, or by post* 2*s.* 2*d.*

THE STATUTORY WILL FORMS 1925.

As prescribed under the Law of Property Act, 1925, printed in large type on tough durable paper for office use. *Price* 1*s., or by post* 1*s.* 2*d.*

THE STATUTORY FORM OF CONDITIONS OF SALE 1925.

As above. *Price* 4*d., or by post* 6*d.*

PROBATE AND DEATH DUTIES.

DYMOND'S DEATH DUTIES.

Comprising Estate, Legacy and Succession Duties, with the Law and Practice and the Text of the Statutes. By R. DYMOND, of the Estate Duty Office, Somerset House, Solicitor (Honours), assisted by G. M. GREEN, of the same office, Solicitor (Honours). "Dymond's" has now become the recognised text-book on Death Duties, owing to its clearness of expression, the accuracy of its information and the practical nature of its contents. New legislation and the numerous important decisions made since the last edition are fully discussed. All the Death Duties are dealt with and the ultimate incidence of the duties is shown, the text of the Statutes being set out in full in the Appendix. **Fifth Edition.** *Price* 25*s. net, or by post* 25*s.* 9*d.*

A HANDBOOK ON THE DEATH DUTIES.

By H. ARNOLD WOOLLEY, Solicitor. Deals in a concise yet clear manner with the main features of the Death Duties as met with in a Solicitor's office, and revised to cover the alterations made by the Finance Act, 1930. The position of those who endeavour to mitigate the duties receives special attention. **Second Edition.** *Price* 10*s.* 6*d. net, or by post* 11*s.*

PROBATE AND ESTATE DUTY PRACTICE.

Dealing in a concise manner with the practice of the Probate Court and the Estate Duty Office, with special regard to the difficulties arising at the present time in the preparation of documents, including those with regard to Settled Land. By EDGAR A. PHILLIPS, LL.B., Clerk of the Principal Probate Registry. **Second Edition.** Enlarged and brought up to date including SUPPLEMENTS explaining the Supreme Court (Non-Contentious Probate) Fees Order, 1928, and dealing with the effect of the decision in *Re Bridgett and Hayes' Contract* and other decisions, and directions thereon as to Settled Land, and certain other directions as to Probate matters. *Price* 10*s.* 6*d. net, or by post* 11*s.*

COMPANY.

TREATISE ON THE CONVERSION OF A BUSINESS INTO A PRIVATE LIMITED COMPANY.

Revised to cover the extensive changes in the law made by the Companies Act, 1929, and containing annotated forms of Memorandum and Articles of Association and other documents, and chapters dealing with Reduction of Capital and Super-Tax. By CECIL W. TURNER, of Lincoln's Inn, Barrister-at-Law. **Fifth Edition.** *Price* **12***s.* **6***d. net, or by post* **13***s.*

THE SECRETARIAL HANDBOOK.

Being a Practical Guide to a Secretary's duties under the Companies Act, 1929, including REMINDERS, showing steps to be taken by Secretaries of existing companies to comply with the new Act. By E. WESTBY-NUNN, B.A., LL.B. Second Edition. This new edition has been entirely revised under the Companies Act, 1929, the new provisions being shown in distinctive type. *Price* **6***s. net, or by post* **6***s.* **6***d.*

An exceedingly practical and complete guide to a secretary's duties under the Companies Act, 1929.—Law Notes.

A most useful book for secretaries and all those connected with the administration of Joint Stock Companies.—Incorporated Accountants' Journal.

THE COMPANIES ACT 1929.

(EIGHTH EDITION OF TURNER'S INDEX TO THE COMPANIES ACTS.)

Being a reprint of the Act bound up with a copious Index and Tables shewing where the corresponding Sections of the Repealed Acts are to be found in the Act of 1929, and *vice versa.* By CECIL W. TURNER, of Lincoln's Inn, Barrister-at-Law. Contains an exact reproduction of the text of the Act printed on superior paper, with sidenotes shewing the sections of the Repealed Acts reproduced by each section of the new Act. *Price* **9***s.* **6***d. net, or by post* **10***s.*

THE NEW TABLE A.

Shewing the alterations in the Form contained in the First Schedule to the Companies Act, 1929. As distinctive types are used, the differences between the old and the new forms are revealed at a glance. *Price* **1***s.* **6***d. net, or by post* **1***s.* **8***d.*

BANKRUPTCY.

MEWS' DIGEST OF CASES ON BANKRUPTCY.

(*Reprinted from the Second Edition of Mews' Digest of English Case Law.*) An indispensable work to all concerned with the Law of Bankruptcy. Royal 8vo, 910 pages, including Table of Cases. *Price* £2 2*s. net, or by post* £2 3*s.*

A DIGEST OF THE LAW RELATING TO BANKRUPTCY AND DEEDS OF ARRANGEMENT.

For Practitioners and Students. By NEVILLE HOBSON, Solicitor (Honours). With Chronological Table of Procedure and Accountancy and Conveyancing Notes. **Third Edition.** Enlarged and completely revised. *Price* 4*s. net, or by post* 4*s.* 3*d.*

An admirable summary of the law, and will be found exceedingly useful by the legal and accountancy professions.—Law Notes.

A most useful summary for students and practitioners.—The Accountant.

SHIPPING AND MARINE INSURANCE.

MARSDEN'S DIGEST OF CASES relating to SHIPPING AND MARINE INSURANCE.

The first edition, reprinted from " Mews' Digest of English Case Law," was exhausted many years ago, and second-hand copies were eagerly sought for. This new edition, reprinted from the second edition of " Mews' Digest," is therefore offered to the public. To bring this re-issue down to date the cases reported in 1925 and 1926 have been added at the end of the book. Royal 8vo. Text 1,042 pages, and Table of Cases 57 pages. **Second Edition.** *Price* £3 3*s. net, or by post* £3 4*s.*

The shipping, commercial and legal worlds will welcome the publication of a second edition. The arrangement is particularly clear, and the book is indexed in a satisfactory manner.—Syren and Shipping.

This invaluable publication provides a complete collection of case law in maritime matters.—The Law Times.

MARINE INSURANCE: The Doctrine of Proximate Cause, and Insurance Against War Risks at Sea.

By The Hon. Mr. Justice WRIGHT, M.A. Two Lectures delivered at the London School of Economics and Political Science, and reprinted from *The Solicitors' Journal*. *Price* 2*s.* 6*d. net, or by post* 2*s.* 8*d.*

LOCAL GOVERNMENT.

TOWN PLANNING AND HOUSING.

By R. A. Glen, M.A., LL.B., of the Middle Temple, Barrister-at-Law. Being two series of articles reprinted from *The Solicitors' Journal* and brought up to date with Full Index, in Two Parts. Deals with all reported and unreported town planning and housing cases still of use, twelve of the former and ninety-two of the latter, also sixty-seven decisions of the Minister of Health on Interim Development Appeals. *Price* 6*s. net, or by post* 6*s.* 6*d.*

SOME POINTS OF HIGHWAY LAW.

By Alexander Macmorran, M.A., K.C. A series of articles reprinted from *The Solicitors' Journal*. Attention is drawn to certain points relating to Highways which are of general interest and which are not infrequently misunderstood or misapplied. *Price* 2*s.* 6*d. net, or by post* 2*s.* 8*d.*

Also by the same author.

PRIVATE STREET WORKS.

The more important of the points which have to be considered in dealing with this important subject are discussed and the methods of procedure compared. *Price* 2*s. net, or by post* 2*s.* 2*d.*

SEWERS AND DRAINS.

The duties of Commissions of Sewers, the distinction between Sewers and Drains, and the responsibilities for the maintenance of sewers are among the aspects of this subject which are dealt with, and numerous cases are cited. *Price* 2*s.* 6*d. net, or by post* 2*s.* 8*d.*

MOTOR CAR LAW.

CHANGES IN MOTOR CAR LAW EFFECTED BY THE ROAD TRAFFIC ACT, 1930, with the Text of the Act.

By N. R. Fox-Andrews, of Lincoln's Inn, Barrister-at-Law, and A. C. Crane, Solicitor. The passing of the Road Traffic Act marked a new era in the Law of the Road. It is no exaggeration to say that millions of men and women are directly affected by the extensive changes it makes and are in doubt as to the effect of its provisions. This summary of the changes, written by two well-known authorities on the subject, should be read by every lawyer without delay. The text of the Act is given and the whole is covered by a comprehensive index. *Price* 12*s.* 6*d. net, or by post* 13*s.*

TRIAL OF MOTOR CAR ACCIDENT CASES.

By Andrew Dewar Gibb, of Gray's Inn, Barrister-at-Law; Advocate of the Scottish Bar. Author of "The Law of Collisions on Land." Part I—Interviews with Clients and Witnesses—with Questionnaire; Part II—Detailed Examination of Witnesses. The book takes up *question by question* the evidence of every class of witness usually called in a running down case, and shows how to prepare and conduct a case; what to ask and why. *Price* 20*s. net, or by post* 20*s.* 9*d.*

MAGISTERIAL LAW.

MATRIMONIAL JURISDICTION OF JUSTICES.

Including Chapter on the Guardianship of Infants Acts, 1886 to 1925, and the text of the Adoption of Children Act, 1926, by ALBERT LIECK, Chief Clerk to the Marlborough Street Police Court, and A. C. L. MORRISON, Chief Clerk to the Lambeth Police Court. *Price* 12*s.* 6*d. net, or by post* 13*s.*

Indispensable to every Bench of Magistrates.—Justice of the Peace.

Very valuable both for the Bench and for those who practise in Petty Sessional Courts.—Law Times.

THE CRIMINAL JUSTICE ACT 1925.

Containing full annotations to the Act, with the sections of the many different Statutes to which reference is made in the Act given in full. By R. E. OTTER, Puisne Judge of the High Court of Rangoon, and G. B. MCCLURE, of the Inner Temple and the South-Eastern Circuit, Barrister-at-Law. *Price* 10*s. net, or by post* 10*s.* 6*d.*

The scheme of the book is distinctly useful and has been efficiently and accurately carried out.—Law Notes.

Will simplify the assimilation of the new legislation.—Law Times.

LANDLORD AND TENANT.

A GUIDE TO THE LANDLORD AND TENANT ACT 1927.

Including SUPPLEMENT containing the High Court and County Court Rules and prescribed Forms, and other additional Forms required under the Act. By H. A. HILL, B.A. (Oxon.), and A. E. PHELPS, Secretary of the National Federation of Property Owners and Ratepayers, of Gray's Inn, Barristers-at-Law. In this most complete and instructive work every effort has been made to elucidate the many difficult points arising in practice, and opinions have been given throughout the work on such points. *Price* 7*s.* 6*d. net, or by post* 7*s.* 10*d.*

THE LANDLORD AND TENANT ACT 1927.

Some Notes on the Practice and Procedure with Suggestions as to Evidence, from both the Landlord's and Tenant's points of view. By S. P. J. MERLIN, Barrister-at-Law, one of the Referees under the Act. Reprinted from *The Solicitors' Journal*. *Price* 2*s.* 6*d. net, or by post* 2*s.* 8*d.*

A GUIDE TO THE RENT AND MORTGAGE INTEREST RESTRICTIONS ACTS 1920 to 1924.

With Supplement published September 1925. A complete exposition with the text of the Acts (including the Repealed Acts) and the Rules. By W. E. WILKINSON, LL.D. (Lond.), Solicitor. **Fourth Edition.** *Price, with Supplement,* 7*s.* 6*d. net, or by post* 8*s.* *Supplement separately* 1*s.*, *or by post* 1*s.* 1*d.*

MISCELLANEOUS.

THE PRACTICE OF THE DIVORCE DIVISION.

By EDGAR A. PHILLIPS, LL.B. (Lond.), of the Divorce Registry. Deals concisely with the practice and procedure of the Divorce Division, as regards suits proceeding both in the Divorce Registry and in the District Registries. Special attention has been paid to the practice in Poor Person Cases and to those matters which present most difficulty to the busy solicitor. The practice on applications for Declarations of Legitimacy is also explained. A Supplement has been added dealing with the effect of the decision in *Apted* v. *Apted and Bliss*, and of Mr. Justice Hill's *obiter dictum* regarding the identification of the woman with whom adultery is alleged. *Price* 15*s. net, or by post* 15*s.* 6*d.*

TALBOT AND FORT'S INDEX OF CASES JUDICIALLY NOTICED.

By GILBERT T. SADLER, M.A., LL.B. Reprinted from "Mews' Digest of English Case Law" and brought down to date. 1,125 pages. **Third Edition.** *Price* £3 3*s. net, or by post* £3 4*s.*

ELECTRICITY (SUPPLY) ACT 1926.

Explained and Annotated. With the Text of the Electricity Supply Acts, 1919 and 1922, as amended. By E. J. RIMMER, B.Sc., M.Eng., A.M.Inst.C.E., and G. READ ALLEN, M.C., A.M.Inst.C.E. (Barristers-at-Law). This book is a careful annotation of all the provisions of the Act, and includes a collation of the powers and duties of the Central Electricity Board and of the Electricity Commissioners. *Price* 12*s.* 6*d. net, or by post* 13*s.*

This work will prove of real value to those concerned in the administration of the Act.—Association of Municipal Corporations Monthly Circular.

LAW RELATING TO MONEY-LENDERS.

By GILBERT STONE and The Hon. DOUGALL MESTON, of Lincoln's Inn, Barristers-at-Law. The law relating to money-lenders is exhaustively dealt with, and the important provisions of the 1927 Act are annotated and explained. **Second Edition.** *Price* 12*s.* 6*d. net, or by post* 13*s.*

INTEREST TABLES UNDER THE MONEYLENDERS ACT 1927.

Calculated, by Chartered Accountants, in accordance with the First Schedule to the Act, and showing the weekly, monthly or quarterly instalments on loans of from £1 to £200 at varying rates of interest. *Price* 7*s.* 6*d. net, or by post* 7*s.* 10*d.*

LAW RELATING TO INNKEEPERS.

By C. C. ROSS, M.A., of Lincoln's Inn, Barrister-at-Law. The principles underlying the relationship between Innkeeper and Guest are set out and their application to Motorists discussed. *Price* 6*s. net, or by post* 6*s.* 5*d.*

THE LAW AND PRACTICE IN RELATION TO INFANTS.

By B. A. Bicknell, LL.B., of the Middle Temple, Barrister-at-Law, Author of " Cases on the Law of the Constitution." The subject is dealt with under four main heads—firstly, as to rights over the infant's person ; secondly, as to rights over his property ; thirdly, as to his other personal capacities and incapacities ; and, fourthly, as to the procedure by which an infant sues or is sued. A model of clearness and conciseness. *Price* **15***s. net, or by post* **15***s.* **6***d.*

A much-needed book . . . which will be valuable both to practitioners and students.—The Law Quarterly Review.

LAW RELATING TO WOMEN.

By E. Ling-Mallison, B.Sc. of the Middle Temple, Barrister-at-Law. This book explains woman's position to-day in the light of the Statutes and Decided Cases. Among the subjects dealt with are the effects of separation and divorce on the relations between husband and wife and their relations with the outside world, on their property, and on the wife's nationality, domicile and name. *Price* **8***s.* **6***d. net, or by post* **9***s.*

A GUIDE TO THE RAILWAY RATES TRIBUNAL.

By Elliot Gorst, of the Inner Temple, Barrister-at-Law. With a Foreword by Sir Max Muspratt, Ex-President Federation of British Industries. A handbook dealing with the Jurisdiction, Practice and Powers of the Railway Rates Tribunal. *Price* **12***s.* **6***d. net, or by post* **13***s.*

RAILWAY PASSENGERS AND THEIR LUGGAGE.

By Geo. B. Lissenden, M.Inst.T., Author of " Railway (Rebates) Case Law," " Industrial Traffic Management," etc. An up-to-date handbook dealing with the relationship between the Passenger and the Railway Company in all its aspects. *Price* **5***s. net, or by post* **5***s.* **4***d.*

LOTTERIES AND THE LAW: THE PRESENT POSITION.

By C. F. Shoolbred, B.A., LL.B. (Cantab.), of the Middle Temple, Barrister-at-Law. A review of the decisions as to the legality of English and Foreign Lotteries and Sweepstakes. The powers of the Postmaster-General relative to circulars, etc., concerning lottery matters are referred to in detail. *Price, Cloth bound,* **7***s.* **6***d. net, or by post* **7***s.* **10***d., or Paper bound,* **2***s.* **6***d. net, or by post* **2***s.* **8***d.*

PASSING OFF: THE LAW AS TO IMITATION AND DECEPTION IN TRADE.

By E. Holroyd Pearce, of Lincoln's Inn, Barrister-at-Law. Dealing with the rights and remedies of the manufacturer, trader or author in restraining rivals from taking advantage of his reputation. A chapter on the position of retailers is also included. *Price* **8s. 6d.** *net, or by post* **9s.**

THE WORKMEN'S COMPENSATION ACT 1925

(as amended by the Workmen's Compensation Act, 1926) and THE WORKMEN'S COMPENSATION RULES, 1926, with Regulations relating thereto, and a Complete Index and Tables, shewing where the corresponding sections of the Repealed Acts are to be found in the 1925 Act, and *vice versa*. By M. Turner-Samuels, of the Middle Temple, Barrister-at-Law, and Donald Geddes, B.A. (Oxon.), LL.B., of the Middle Temple. All who have to deal with this important subject, in which frequent reference has to be made to the Acts and Rules, will appreciate this handy book, with its complete Index and Tables. Paper Boards. *Price* **7s. 6d.** *net, or by post* **7s. 10d.**

NEW SYSTEM OF BOOK-KEEPING FOR SOLICITORS.

A handbook on an easily-learnt system of keeping Solicitors' Books. By Lewis E. Emmet, Solicitor, Author of "Notes on Perusing Titles." *Price* **4s. 6d.** *net, or by post* **5s.**

THE LAW, THE ADVOCATE AND THE JUDGE.

By The Hon. Mr. Justice McCardie, Reader of the Middle Temple. Being the "Reader's Address" delivered at the Middle Temple Hall, on the 19th May 1927. *Price* **2s.** *net, or by post* **2s. 2d.**

THE ENFORCEMENT OF FOREIGN JUDGMENTS.

By W. Valentine Ball, O.B.E., a Master of the Supreme Court. A concise summary of this subject, in which some fifty cases are quoted. Reprinted from *The Solicitors' Journal*. *Price* **2s.** *net, or by post* **2s. 2d.**

THE CIRCUIT SYSTEM.

A Reading delivered before The Honourable Society of the Middle Temple. By St. John Gore Micklethwait, K.C., B.C.L., Recorder of Reading, with a Foreword by His Honour Judge Sir Alfred Tobin, K.C. The valuable educational effect of the Judge on Circuit and the beneficial influence of the Circuit Mess fully justify, in the opinion of Mr. Micklethwait, the retention of the System. His Reading is enlivened by many interesting and amusing anecdotes. *Price* **1s.** *net, or by post* **1s. 1d.**

MEWS' DIGEST

OF

ENGLISH CASE LAW

SECOND EDITION.

A Practical Digest of the Living Cases from early times to the end of 1924, in 24 volumes.

Editor-in-Chief:

Sir ALEXANDER WOOD RENTON, K.C.M.G., K.C.

Assisted by a number of Members of the Bar.

Seven Points worth noting:

1. The whole Digest is contained in twenty-four volumes.
2. A complete Table of Cases, in one volume, covers the whole work.
3. This edition includes an Index of Cases over-ruled, approved or otherwise dealt with in the Courts.
4. The Digest may be purchased by instalments.
5. The work can be supplied printed on either thick or thin paper at the same price. Both editions are strongly bound in cloth, lettered in gold.
6. In *any* Lawyer's office the Digest will save valuable time.
7. Quarterly and Annual Supplements are issued, which keep the Digest right up to date, and will be periodically consolidated.

Price and particulars of payment by instalments on application.

If one takes the view that time is money, the price, from any point intrinsically moderate, becomes positively ludicrous. —LAW NOTES.

The most indispensable law book in existence.

—THE SOLICITORS' JOURNAL.

Full Prospectus and Order Form will be sent on application.

Ready to YOUR Hand for Rapid Consultation.

EVERYDAY STATUTES ANNOTATED

1235—1929.

LIBRARY EDITION IN FOUR VOLUMES.
THIN PAPER EDITION IN TWO VOLUMES.

This Publication is a Collection of just those Acts the Lawyer needs in every-day practice, and covers, amongst others, the following important subjects :—

Arbitration.	Lands Clauses.
Bankruptcy.	Libel.
Bill of Exchange.	Married Women.
Carriers.	Master and Servant.
Companies.	Matrimonial Causes.
Copyright.	Mercantile Law.
Criminal Law.	Moneylenders.
Death Duties.	Partnership.
Debt and Debtors.	Property Law.
Evidence.	Sale of Goods.
Executors.	Settled Land.
Frauds, Statute of.	Shipping.
Income Tax.	Shops.
Infants.	Solicitors.
Intoxicating Liquors.	Stamps.
Land Charges.	Trustees.
Land Registration.	Wills.
Landlord and Tenant.	

The Acts are grouped under subjects, and include voluminous notes to cases on the construction of the Acts, to repeals, and to amendments.

Cumulative Supplements will be issued to keep the work up to date.

Price, £8 8s. net, postage extra ; or may be purchased by Five Quarterly payments of **£1 16s.** each, postage extra.

Full Prospectus and Order Form will be sent on application.

INDEX OF AUTHORS.

	PAGE
ALLEN, G. READ	
The Electricity (Supply) Act 1926, with the text of the Electricity Supply Acts 1919 and 1922, as amended ..	8
BALL, W. VALENTINE	
The Enforcement of Foreign Judgments	10
BICKNELL, B. A.	
Law and Practice in Relation to Infants	9
CHERRY, Sir BENJAMIN L.	
Prideaux's Conveyancing Forms and Precedents, 3 vols. ..	1
COSWAY, A. H.	
Manual of Trust Law	2
CRANE, A. C.	
Changes in Motor Car Law effected by the Road Traffic Act, 1930	6
DYMOND, R.	
Death Duties	3
EMMET, LEWIS E.	
New System of Book-keeping for Solicitors	10
Notes on Perusing Titles, 2 vols.	1
EVERYDAY STATUTES ANNOTATED	12
FELLOWS, ALFRED	
Everyday Points in Practice under the Law of Property Acts, with Index and Tables	2
FOX-ANDREWS, N. R.	
Changes in Motor Car Law effected by the Road Traffic Act, 1930	6
GEDDES, DONALD	
The Workmen's Compensation Act 1925 (as amended by the Workmen's Compensation Act 1926) and the Workmen's Compensation Rules 1926	10
GIBB, A. D.	
Trial of Motor Car Accident Cases	6
GLEN, R. A.	
Town Planning and Housing	6

PAGE

GORST, ELLIOT
A Guide to the Railway Rates Tribunal 9

GREEN, G. M.
Dymond's Death Duties 3

HENRIQUES, JULIAN Q.
Patents Conveyancing 2

HILL, H. A.
A Guide to the Landlord and Tenant Act 1927 7

HOBSON, NEVILLE
A Digest of the Law Relating to Bankruptcy and Deeds of Arrangement 5

INTEREST TABLES under the Moneylenders Act 1927 .. 8

LIECK, ALBERT
Matrimonial Jurisdiction of Justices 7

LING-MALLISON, E.
Law relating to Women.. 9

LISSENDEN, GEO. B.
Railway Passengers and their Luggage 9

McCARDIE, THE HON. MR. JUSTICE
The Law, The Advocate and The Judge 10

McCLURE, G. B.
The Criminal Justice Act 1925 7

MACMORRAN, ALEXANDER
Private Street Works 6
Sewers and Drains 6
Some Points of Highway Law 6

MARSDEN'S DIGEST OF CASES RELATING TO SHIPPING AND MARINE INSURANCE 5

MAXWELL, J. R. PERCEVAL
Prideaux's Conveyancing Forms and Precedents, 3 vols. .. 1
Wolstenholme & Cherry's Conveyancing Statutes, &c. .. 1

MERLIN, S. P. J.
The Landlord and Tenant Act, 1927 7

MESTON, THE HON. DOUGALL
Law Relating to Money-lenders.. 8

MEWS' DIGEST OF ENGLISH CASE LAW
Second Edition, 24 vols. 11

PAGE

MEWS' DIGEST OF CASES ON BANKRUPTCY
Reprinted from the Second Edition of Mews' Digest of English Case Law 5

MICKLETHWAIT, ST. JOHN GORE
The Circuit System 10

MONEYLENDERS' ACT 1927, INTEREST TABLES under the 8

MORRISON, A. C. L.
Matrimonial Jurisdiction of Justices 7

NIELD, FRED. T.
An Aid to Apportionment 3

OTTER, R. E.
The Criminal Justice Act 1925 7

PEARCE, E. HOLROYD
Passing Off: The Law as to Imitation and Deception in Trade 10

PHELPS, A. E.
A Guide to the Landlord and Tenant Act 1927 7

PHILLIPS, EDGAR A.
Practice of the Divorce Division 8
Probate and Estate Duty Practice 3

POLLOCK, HUGH
The Law of Property Acts 1922 to 1925 1
The Law of Property (Amendment) Act 1926, Supplement to the above 1

PRIDEAUX'S CONVEYANCING FORMS & PRECEDENTS, 3 vols. 1

RENTON, SIR ALEXANDER WOOD (Editor-in-Chief)
Mews' Digest of English Case Law, Second Edition, 24 vols. 11

RIMMER, E. J.
The Electricity (Supply) Act 1926, with the text of the Electricity Supply Acts 1919 and 1922, as amended .. 8

ROSS, C. C.
Law Relating to Innkeepers 8

SADLER, GILBERT T.
Talbot & Fort's Index of Cases Judicially Noticed 8

PAGE

SHOOLBRED, C. F.
Lotteries and the Law 9

STATUTORY FORM OF CONDITIONS OF SALE 1925 .. 3

STATUTORY WILL FORMS 1925 3

STONE, GILBERT
Law Relating to Money-lenders.. 8

TABLE A
Contained in the First Schedule to the Companies Act, 1929 4

TALBOT & FORT'S
Index of Cases Judicially Noticed 8

TURNER, CECIL W.
The Companies Act, 1929 4
Treatise on the Conversion of a Business into a Private Limited Company 4

TURNER-SAMUELS, M.
The Workmen's Compensation Act 1925 (as amended by the Workmen's Compensation Act 1926) and the Workmen's Compensation Rules 1926 10

WESTBY-NUNN, E.
The Secretarial Handbook 4

WILKINSON, W. E.
A Guide to the Rent and Mortgage Interest Restrictions Acts 1920 to 1924, with Supplement published September 1925 7

WILLOUGHBY, R. M. P.
Apportionments on Completion of Sales of Land, with Particulars of the Common Outgoings of Land 2

WITHERS, A. H.
Mixed Charities 3

WONTNER, J. J.
A Guide to Land Registry Practice 2

WOOLLEY, H. ARNOLD
A Handbook on the Death Duties 3

WRIGHT, The Hon. Mr. Justice
Marine Insurance : The Doctrine of Proximate Cause, and Insurance Against War Risks at Sea 5

29 OCT. 1928

Printed at the Society's Works, 102-7 Fetter Lane, E.C 4.

29 OCT. 1930